

# P&O FERRYMASTERS

## General Conditions: 2022

### 1 DEFINITIONS

1.1 In these conditions:

**“the Company”** - means P&O Ferrymasters Limited and/or Unifeeder Shortsea – a business unit of Unifeeder A/S in the form of an agreement based joint venture between P&O Ferrymasters Limited and Unifeeder A/S and/or any other company or entity within the P&O Ferrymasters Holdings Limited Group, including any direct or indirect affiliate, subsidiary, joint venture and any agreement based joint ventures of any such company or entity.

**“the Customer”** - means jointly and severally, the shipper, the receiver, the consignee, any person owning or entitled to the possession of the Goods and any other person at whose request or on whose behalf the Company undertakes any business or provides advice, information or services and, in respect of each of the aforementioned parties, their agents and servants;

**“the Conditions”** or **“these Conditions”** - means these General Conditions of the Company and any other terms and conditions referred to in clause 2;

**“the Goods”** - means all goods and merchandise which is the subject of the Services and includes any Transport Units not supplied by or on behalf of the Company;

**“Controller”, “Processor”, “Data Subject”, “Personal Data”, “Personal Data Breach”** and **“Processing”** shall have the meanings given to them by the Data Protection Legislation;

**“Direct Customs Agent”** - has the meaning as set out in the BIFA Conditions;

**“Indirect Representative”** - has the meaning set out at section 21(1)(b) of the Taxation (Cross-border Trade) Act 2018

**“Banned Goods”** and **“Theft Attractive Goods”** - each have the meanings described to those items in the list published here <https://www.poferrymasters.com/about-us/customer-information> which may be amended by the Company from time to time and available from the Company upon request.

**“Booking Confirmation”** means a written confirmation of acceptance of a booking by the Company to the Customer subject always to these Conditions.

**“Data Protection Legislation”** means (a) to the extent the UK GDPR applies, the law of the United Kingdom or of a part of the United Kingdom which relates to the protection of Personal Data; (b) to the extent the EU GDPR applies, the law of the European union or any member state of the European Union to which the Company or the Customer is subject, which relates to the protection of Personal Data;

**“EU GDPR”** means the General Data Protection Regulation ((EU) 2016/679);

**“Force Majeure Event”** means any circumstance not within a party’s reasonable control including, without limitation: heavy weather, perils of the sea, issued sea protests, war, war threat, riot, epidemics, pandemics, uproar, natural disaster, nuclear disaster, terrorist activities or attacks, fire, technical problems to means of transport, infrastructure works, closure or blockades (temporary or permanent) of ports, roads, inland waterways or railway lines, shunting areas, yards or terminals, strikes or similar labour actions, serious accidents, suicides, derailments, people trying to gain access to means of transport, including but not limited to illegal immigrants and refugees, cyber-attacks and cybercrime.

**“UK GDPR”** has the meaning given to it in section 3(10) of the Data Protection Act 2018 (DPA 2018), supplemented by section 205(4) of the DPA 2018.

**“SDR”** - means Special Drawing Right as defined by the International Monetary Fund.

**“Sub-contractor”** means any entity, including, without limitation, a person, firm or company and to include – but not limited to – servants (where not deemed to be employees or agents) and all independent contractors of the Company such as stevedores, terminal operators and transport operators, which enters into a contract with the Company for the carriage, transportation, forwarding or storage of Goods.

**“Services”** means the services provided by the Company as set out in a Quotation to include, where specified, the carriage and storage of Goods (and making arrangements for the carriage and storage of Goods) and making customs declarations on behalf of a Customer.

“**Transport Unit**” - means any device used for the carriage, transportation or storage of the Goods including any container, tanker, tank, vehicle, trailer, barge, vessel, train, aircraft or other equipment of any type whatsoever;

“**the Belgian Forwarding Conditions**” – means Belgian Freight Forwarders Conditions, published in the Supplements to the Belgian Official Gazette (Belgisch Staatsblad – Moniteur belge), June 24, 2005, available on request from the Company;

“**the BIFA Conditions**” - means the Standard Trading Conditions 2021 Edition published by the British International Freight Association (BIFA) available on request from the Company or from BIFA;

“**the Dutch Forwarding Conditions**” - means Dutch Forwarding Conditions, as lodged by FENEX (Netherlands Association for Forwarding and Logistics) with the Clerks of the District Courts of Amsterdam on May 1st 2018, available on request from the Company or from FENEX;

“**the FIATA Conditions**” - means the Standard Conditions (1992 Edition) governing the FIATA Multimodal Transport Bill of Lading available from the Company upon request;

“**the LSC**” – means Logistics Services Conditions, as filed by FENEX (Netherlands Association for Forwarding and Logistics) and TLN (transport and logistics Netherlands), with district court of Rotterdam on 2 April 2014, available on request from the Company or from FENEX or from TLN;

“**the UKWA Terms**” – means the 2020 Edition or latest version of the United Kingdom Warehousing Association Contract Conditions for Logistics as at the date of the Customer’s booking, available on request from the Company or UKWA;

“**CIM**” – means Uniform Rules Concerning the Contract of International Carriage of Goods by Rail (CIM-Appendix B to the Convention on international rail transport (“COTIF”));

“**CMR**” - means the Convention on the Contract for the International Carriage of Goods by Road dated 19th May 1956 enacted into English Law by the Carriage of Goods by Road Act 1965;

“**Industry Standard Terms**” – means the BIFA Terms, the UKWA Terms, the LSC, the CMR, the CIM, the Belgian Forwarding Conditions and the Dutch Forwarding Conditions;

“**The UCC**” – means EU Regulation 952/2013 (the Union Customs Code);

“**Quotation**” means the Company's proposal to the (potential) Customer for the performance of the Services, such terms to form the basis of an offer by the Customer to purchase the Services, subject always to these Conditions and acceptance by the Company by means of a Booking Confirmation.

1.2 The headings in these Conditions are for convenience only and shall not affect their interpretation.

## 2 APPLICATION

2.1 All and any activities of the Company in the course of business (whether gratuitous or not) are undertaken subject to these Conditions. These Conditions apply to all Quotations, offers and Booking Confirmations made by the Company, to all requests for offers or quotations to the Company (whether accepted or not), to all contracts entered into by the Company and to all Services whether gratuitous or not and to all legal and factual acts performed in that connection.

2.2 The respective rights and obligations of the parties under these Conditions shall be read and construed as being subject to and governed by the following:

2.2.1 Where the Company is acting in the capacity of freight forwarder in the UK, the BIFA Conditions except that the definitions above shall be substituted for the definitions in the BIFA Conditions;

2.2.2 Where the Company is acting in the capacity of freight forwarder in the Netherlands and Germany, the Dutch Forwarding Conditions;

2.2.3 Where the Company is acting in the capacity of freight forwarder in Belgium, the Belgian Forwarding Conditions;

2.2.4 In respect of carriage or transportation by sea for which the company issues its own house bill of lading, the FIATA Conditions and the terms of that house bill of lading;

2.2.5 Where the Company is providing warehousing services in UK, the UKWA Terms;

2.2.6 Where the Company is providing warehousing services in the Netherlands, the LSC;

- 2.2.7 For the avoidance of doubt, if the Company acts in more than one capacity under the same booking, then the relevant Industry Standard Terms shall apply at each stage;
- 2.2.8 To the extent that the Company is held to be acting in more than one capacity in relation to sub-clause 2.2.1, 2.2.2, 2.2.3, and/or 2.2.5 and 2.2.6 above, the BIFA Conditions shall take precedence.
- 2.3 If any International Convention (including CMR, CIM) applies and such Convention does not contain any provisions relating to an aspect of the contract or an issue between the Company and the Customer, then, insofar as any of these Conditions do not derogate from such Convention, these Conditions shall apply to that aspect or issue.
- 2.4 No Sub-contractor has the power or is permitted to alter or vary these Conditions in any way unless such alteration or variation has been expressly authorized in writing by a registered director of the Company.
- 2.5 If any provision of these Conditions (or part of any provision) is held by any competent court or tribunal to be invalid, illegal or unenforceable in whole or in part, 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 these Conditions shall not be affected. If any invalid, unenforceable and illegal provision of these Conditions 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.
- 2.6 Notwithstanding the provisions of clause 2.2 above the following conditions shall prevail over any other terms and conditions therein referred to in the event of any inconsistency between them.
- 2.7 These Conditions and any other express terms included in a Booking Confirmation constitute the entire agreement between the Parties with regard to the contract between the parties for the Services, to the exclusion of all other terms including, without limitation, any terms referred to by the Customer at any time prior to the execution of the Booking Confirmation. These also supersede the terms of all previous agreements whether written or oral between the Parties.

### **3 INFORMATION TO BE PROVIDED BY CUSTOMER AT TIME OF BOOKING AND GENERAL CUSTOMER'S RESPONSIBILITY**

- 3.1 It is the responsibility of the Customer to provide the Company with full details in writing of the Goods and all other details necessary for the Company to perform the Services in a complete, accurate and timely manner, such details to include, without limitation:
- 3.1.1 The precise nature and value of the Goods to be carried;
- 3.1.2 Any circumstances at the intended place of loading or the intended place of delivery which may obstruct the loading, discharge or delivery of the Goods including, but not limited to, any height or width restrictions, and any circumstances which may pose a health safety risk to the driver and/or the carrying vehicle;
- 3.1.3 Any unique reference number or code allocated to the Goods to be carried, to be used by the Company so as to ensure correct identification of the Goods;
- 3.1.4 Any special requirements of the Customer with regard to the handling, securing, security or transport of the Goods to be carried;
- 3.1.5 Any specific date and time by which the Goods are required to be delivered.
- 3.2 Without prejudice to the Customer's obligation to comply with all applicable laws and regulations, the Customer is in any event obliged:
- 3.2.1 to provide the Company with all documentation required in the performance of the Services, including but not limited to the documents relating to the Goods that are reasonably required by the Company to comply with any applicable customs, excise, tax, health and safety or other requirements or regulations imposed by any authority. If the Company has agreed to act as the Customer's Direct or Indirect Representative in accordance with clause 9 below, the Customer shall provide any information that the Company might require in order to perform such role and to comply with all legal requirements, including those imposed by HMRC or any other customs authority. The Customer warrants that all information provided by the Customer is accurate, including but not limited to the accuracy, at the time the Goods were taken in charge by the Company, of the description of the Goods, marks, numbers, quantity, weight and information necessary for the purposes of making accurate customs declarations;

- 3.2.2 to ensure that all Goods or Transport Units are ready for collection and loading at the agreed place and time;
- 3.2.3 to ensure that the Goods are packed so as to be able to withstand the ordinary risks of transport having regard to their nature and in compliance with all laws and regulations which may apply at any time;
- 3.2.4 to ensure that the Goods will not cause damage, injury or environmental damage including by pollution to any person, the Company, its employees or Sub-contractors, other Goods, Transport Units, vessels, other equipment, property, the environment or in general;
- 3.2.5 with regard to Goods that are dangerous, inflammable, radio-active or of a potentially damaging nature to: (i) comply with any obligation of the Customer laid down in any applicable legislation (ADR, RID, IMDG) and (ii) give timely written notice to the Company of the rules which must be followed in accordance with the applicable legislation and/or other government schemes; (iii) to mark the Goods and the Transport Unit or other packaging on the outside as required by any laws or regulations which may be applicable during the carriage. The Company may nevertheless, in its absolute discretion, reject any Goods that meet the description in this clause.
- 3.3 The Company has no liability for losses caused by or arising from the failure of the Customer to comply with clauses 3.1 or 3.2 and the Customer shall fully indemnify and hold the Company harmless in respect of any liability, loss, cost or other expense whatsoever (including losses arising through the Customer's tendering of inaccurate, inadequate or incomplete information required for customs declarations) (each "a Liability" and together "Liabilities") that the Company might incur as a result of the Customer's failure to comply with its obligations pursuant to clauses 3.1 or 3.2. Liabilities may include, without limitation:
- 3.3.1 any legal costs, indirect and consequential loss and loss of profits;
- 3.3.2 costs incurred in repairing damage to and replacing packaging of Goods;
- 3.3.3 costs of weighing the Transport Unit or Goods;
- 3.3.4 costs caused by extra handling of the Goods;
- 3.3.5 cleaning of, damage to and/or loss of Transport Units;
- 3.3.6 expenses of fumigation and/or of gathering and sorting loose Goods;
- 3.3.7 expenses caused by opening of any Transport Unit or otherwise handling any Transport Unit.
- 3.4 The Customer is responsible for the performance of a reasonable inspection at or prior to the time when the Transport Unit is packed, stuffed or loaded to confirm the suitable condition of the Transport Unit for transport. Where no objection is raised at the time of such inspection, the Customer shall be taken to have waived any right to complain of the condition of the Transport Unit at loading at a later time. It is agreed that superficial rust, oxidation or condensation inside the Transport Unit or any like condition due to moisture is not the responsibility of the Company, unless the Company has expressly agreed to provide a Transport Unit to meet special requirements requested by the Customer. If the Customer requires special arrangements or care for the carriage of Goods, he must request same in writing to the Company and said arrangements must be noted on the bill of lading or waybill and special freight, as required, must be paid by the Customer.
- 3.5 In the event of receipt of a pre-loaded Transport Unit, neither the Company nor any Sub-contractor shall be deemed to have received the Goods contained therein in a good and complete order or condition, apparent or otherwise, even if no express reservation has been made in this respect.
- 3.6 If for any reason whatsoever the Goods are refused for import or export by governmental authorities, the Customer shall be liable and hold the Company harmless for all costs and expenses incurred by the Company as a result. and the Customer shall pay return freight and charges upon first demand.
- 3.7 The Company may, in its sole discretion open or otherwise handle in a way it deems appropriate or necessary any Transport Unit, including where it is directed or requested to do so by HMRC or any other competent authority. The Customer shall indemnify the Company against any additional expense incurred as a result.

#### **4 BANNED GOODS AND THEFT ATTRACTIVE GOODS**

- 4.1 The Company will not in any circumstances accept Banned Goods for carriage;
- 4.2 The Company will only against payment of a surcharge to be agreed with the Customer carry Theft Attractive Goods;
- 4.3 The Company will accept no liability of any nature in relation to Banned Goods or Theft Attractive Goods which are carried by the Company unknowingly or in any event where Goods are mis-declared by the Customer and/or the Customer fails to comply with the obligation set out at clause 3.1.1 above.

#### **5 LIMITS OF LIABILITY**

- 5.1 Without prejudice to the effect of any other provision herein, where any Transport Unit is carried over part of the journey by sea, inland waterway, rail or air: to the extent that it is proved that any loss, damage or delay in delivery of the Goods occurred during the carriage by sea, inland waterway, rail or air, such carriage shall be on terms that the Company accepts the same liability to the Customer in respect of the Goods as that to which the actual carrier by sea, inland waterway, rail or air (as the case may be) would have been subject had the Customer made a separate direct contract with such carrier, subject to the actual carrier's terms and conditions of business, provided those terms and conditions do not impose a liability greater than:
  - 5.1.1 the limits of liability set out at in the terms referred to at clause 2.2 above; and
  - 5.1.2 in the case of carriage to which any international convention applies, the limits of liability set out in the applicable convention;
  - 5.1.3 in the case of carriage by sea which is subject to the terms and conditions of the sea carrier, the limits of liability set out in such terms and conditions;
  - 5.1.4 in all other cases the limits of liability set out in Clause 26 of the BIFA Conditions.
- 5.2 The Customer shall indemnify and hold the Company harmless from and against any and all third-party claims for payment of compensation relating to the contract between the Customer and the Company, in as far as these claims exceed the Company's liability towards the Customer under these conditions.
- 5.3 The liability of the Company is explicitly excluded for;
  - 5.3.1 lost profit, consequential and/or indirect damage (including – but not limited to – damage as a result of delay, return transport costs, products recalls or demurrage) and immaterial damage.
  - 5.3.2 penalties including but not limited to import duties, excise duties, turnover tax, restitutions and/or other levies or related fines which are imposed by any government or any other authority charged with such duties, which are demanded in connection with the performance of the Services.
- 5.4 To the fullest extent permitted by law and subject to in the other provisions of this clause 5 above, in all other cases the Company's liability for damage or loss in relation to Goods shall be limited to SDR 2 per kilogram of gross weight of the Goods lost or damaged with a maximum of 10,000 SDR per occurrence or series of occurrences with one and the same cause. This clause 5.4 shall amongst others apply to terminal handling activities for the Customer and in the event the Goods are being held and/or stored during the performance of Services by Company for a longer period than 24 hours at a terminal, warehouse or other storage facility.
- 5.5 For other damages, losses or expenses, the Company's liability howsoever arising shall in all cases be limited to 25,000 SDR per occurrence or series of occurrences with one and the same cause of damage.

## **6 INDEMNITY AGAINST LIABILITY INCURRED BY THE COMPANY**

- 6.1 The Customer will indemnify and hold the Company harmless in respect of any Liability (as defined at clause 3.3 above) incurred by the Company as a result of or in connection with the carriage of the Goods, (including in relation to any customs declarations made by the Customer or on the Customer's behalf), save to the extent that any such obligation results directly from any error, omission or negligence on the part of the Company.
- 6.2 The Company will not be liable for any liability, customs duties, fines, taxes or other charges incurred by the Customer as a result of or in connection with the carriage of the Goods, save to the extent that such liability results directly from any error, omission or negligence on the part of the Company.

## **7 LOADING & UNLOADING OF VEHICLES AND SUPPLY OF 'STAND' TRAILERS**

- 7.1 The Customer is responsible for the loading, stowing and unloading of the Goods inside or on the Transport Unit. The Company accepts no responsibility for the loading to and unloading of Goods from the Transport Unit at the place of collection and the place of delivery respectively, nor for any loss or damage to the Goods during such operations, even where the Company, its employees, agents or sub-contractors agree to assist.
- 7.2 The Customer shall at all times remain liable for the acts or omissions of its employees, servants or agents who are engaged in loading and unloading operations, and will indemnify the Company in accordance with clause 6 above in respect of any loss, damage or liability resulting from such operations. Loading and unloading is entirely at the risk of the Customer.
- 7.3 The Customer shall ensure that any driver is fully apprised of all details of the job in question, including all health and safety considerations and rules. The Customer shall also ensure that a safe environment and all necessary equipment are available for the driver to access and prepare (if agreed) the Transport Unit for loading and unloading, and to secure the goods for transport after loading in order to ensure compliance with applicable safety regulations. The Customer shall remain liable for any breach of such regulations and shall indemnify, and hold harmless, the Company, its employees and/or its Sub-contractors against any liability, loss or damage sustained or incurred by or levied upon the Company, its employees and/or Sub-contractors, regardless of whether such claim is the result of a fault in the performance on the part of the Company, its employees and/or Sub-contractors.
- 7.4 Where the Company supplies to and leaves with the Customer a Transport Unit for the Customer to load the Goods, the Customer will indemnify the Company in respect of any loss or damage sustained to or caused by the Transport Unit prior to collection of that Transport Unit by the Company from the Customer.

## **8 COMPANY'S CHARGES AND PAYMENT CONDITIONS**

- 8.1 All Quotations issued by the Company are non-binding and can be revoked by the Company at any time without cause and without liability.
- 8.2 Quotations, price indications and other proposals concerning the basis on which Services will be provided by the Company shall remain valid for a period of 30 days only from the date of issuance unless expressly agreed otherwise in writing.
- 8.3 Quotations, price indications and proposals shall only include those Services that are expressly set out within. Any services not expressly set out shall not be considered as included in the price and, if performed, the Company shall be entitled to invoice for those services separately.
- 8.4 The price quoted by the Company is exclusive of all additional and/or variable charges and special services, unless otherwise specifically quoted. The Company reserves the right to re-negotiate and/or to increase charges in the event of a substantial or significant increase of costs factors and/or currency rates.
- 8.5 The Company's charges for the business or Services undertaken or provided shall be payable by the Customer without prejudice to the Company's rights against any owner of the Goods or the Goods themselves.
- 8.6 Payment shall be made in the country, to the bank account and in the currency stipulated on the invoice, unless it has been otherwise agreed. In the latter case, any exchange losses suffered by the Company shall be for account of the Customer. All bank charges associated with such payment shall be borne by the Customer.
- 8.7 Where the Company exercises any power of sale over the Goods, the Company shall be entitled to sell on the basis of the best offer immediately available to it without obligation to investigate any specialist markets.

- 8.8 All payments to the Company must be made without set-off or counterclaim.
- 8.9 In the event that the Company incurs increases in operating costs as a result of expenses incurred during transit, including as a result of:
- 8.9.1 legislation that may be in place in a particular country through which transit or collection / delivery takes place, or changes or revisions to legislation in such countries; or
  - 8.9.2 the introduction or variation of taxes that affect the transit;
- the Company will be entitled to invite the Customer to agree new rates. If an agreement on new rates cannot be reached within 14 days of an invitation in writing to agree new rates, the Company will be entitled to terminate its contract with the Customer immediately.
- 8.10 The Company's charges shall be paid by the Customer in full within 14 days from the invoice date, unless otherwise expressly agreed by separate credit terms agreement or conditions.
- 8.11 The Customer shall be deemed to have approved the invoice as correct, to have acknowledged the debt if a dispute has not been received in writing within 14 days of the date of the invoice. A demand by the Customer for proof of delivery (e.g. waybill signed for delivery) by the Company shall not be considered a valid notification by the Customer to dispute an invoice.
- 8.12 Additional charges will apply for dangerous or hazardous goods, where these are accepted for carriage.
- 8.13 Any delay arising from circumstances outside the Company's control shall be at the risk of the Customer and any costs and other consequences that might arise as a result (including rejection of goods at destination) shall be for the Customer's sole account.
- 8.14 Fuel surcharges shown on invoices may be subject to adjustment where fuel costs vary during transit.
- 8.15 All sums are invoiced inclusive of VAT and all other duties and taxes, which will remain the responsibility of the Customer, where applicable.
- 8.16 The Company is entitled to charge interest from the date on which the Company's charges become payable at the rate stipulated in the Late Payment of Commercial Debts (Interest) Act 1998, or any amendment of that Act.
- 8.17 In the event of failure by the Customer to pay the Company's charges in accordance with this clause and without prejudice to the terms of Clauses 8, 9 & 10 of the BIFA Conditions any credit agreement made between the Company and the Customer shall be cancelled upon 24 hours written notice from the Company to the Customer. Upon expiry of the 24-hour notice period all sums due to the Company shall immediately become due and owing.

## **9 CUSTOMS DECLARATIONS**

- 9.1 The Company may expressly agree to act as the Customer's customs representative for the purposes of the importation of goods into the UK. Where it does so, it will always act as Direct Customs Agent (even where the UCC does not apply by force of law), wherever this is permitted by law.
- 9.2 Where the Company expressly agrees or is obliged by law to act as an Indirect Representative, the Company shall be entitled to security from the Customer in a form and in such reasonable amount to be determined by the Company, in respect of any potential liability to HMRC arising from the declaration and importation of the Goods.
- 9.3 The Customer shall indemnify and hold the Company harmless in respect of any liability, loss, cost or other expense whatsoever that the Company might incur, to HMRC or any other customs authority, in its performance of its role as the Customer's Direct Representative or Indirect Representative, including, without limitation, any legal costs, indirect and consequential loss and loss of profits.
- 9.4 It is the Customer's responsibility to provide the correct tariff classification for the Goods.
- 9.5 Depending on where the Customer's Customs Representative, instructed by the Customer is established, the performance of the Customs Formalities shall be subject to the following terms and conditions which are available for printing and downloading via <https://www.poferrymasters.com/about-us/customer-information>

- i. UK: The Standard Trading Conditions 2021 Edition published by the British International Freight Association (BIFA) available on request from the Company or from BIFA;
- ii. Belgium: Belgian Forwarding Conditions, available on request from the Company, Belgian law to apply and the tribunals of Antwerp, Belgium, to have exclusive jurisdiction in the first instance;
- iii. Germany: the Dutch Forwarding Conditions, General Conditions of FENEX (2018), available on request from the Company, German law to apply and the Courts of Hamburg, Germany, to have exclusive jurisdiction in the first instance;
- iv. The Netherlands, or any other location: the Dutch Forwarding Conditions, General Conditions of FENEX (2018), available on request from the Company, Dutch law to apply and the Court of Rotterdam, the Netherlands, to have exclusive jurisdiction in the first instance.

## **10 FORCE MAJEURE**

- 10.1 The Company shall not be liable for loss arising from failure to perform the Services, in part or in whole, where such failure is caused by a Force Majeure Event.
- 10.2 Where a Force Majeure Event prevents or hinders the performance of the Services by the Company, its employees or its Sub-contractors, performance by the Company of the Services shall be suspended until the Force Majeure Event ceases to prevent or hinder performance.

## **11 REFRIGERATED OR HEATED CARGO**

- 11.1 Where Goods are tendered by a Customer that require transportation under special conditions, including in relation to the temperature at which they must be transported, it is the Customer's responsibility to provide the Company with full details of the requirements in writing. . Where a refrigerated or heated Transport Unit is packed by or on behalf of the Customer, the further warrants and undertakes that the Goods have been properly cooled or heated to the correct temperature, before stowage in the Transport Unit and that the thermostatic controls have been appropriately set by the Customer before of the tendering of the Goods to the Company. If the above requirements are not complied with and without prejudice to all other defences, exclusions and limits of liability in these Conditions, the Company shall not be liable for any loss of or damage to the Goods, howsoever arising.
- 11.2 The Company shall not be liable for any loss of or damage to the Goods arising from latent defects, derangement, breakdown, stoppage of the refrigerating or heating machinery, plant, insulation and/or any apparatus of the Transport Unit and any other facilities whatsoever, provided that the Company shall before or at the beginning of the carriage exercise due diligence to maintain the refrigerating or heating controls at the agreed temperature range.
- 11.3 In the event that the Company, its employee or Sub-contractor fails to comply with the Customer's written instructions concerning the temperature at which the Goods were to be carried, the Company will not be liable unless the Customer proves that there is a substantial change in the physical condition of the Goods and that such damage actually results from the failure to comply with the Customer's written instructions.

## **12 DATA PROTECTION**

- 12.1 Parties recognise and accept that if a party processes Personal Data relating to any of the other party's directors, employees, independent contractors, agents or clients, it shall do so in strict adherence to the Data Protection Legislation.
- 12.2 Furthermore, both Parties warrant and undertake that they will duly observe all relevant obligations imposed upon them by applicable Data Protection Legislation, regulations and best practices in this respect.
- 12.3 Any such processing activities will be limited to those required for the performance of the Services or delivering the goods under the agreement to which these Conditions apply, or as specifically authorised by the Company in writing. In this respect, the Customer expressly represents and warrants that: (i) it shall take suitable technical and organisational measures to protect and secure Personal Data. More specifically, the Customer shall protect Personal Data against destruction, whether inattentive or deliberate, loss, forgery, unauthorised disclosure or access and against any form of unlawful processing. The Customer shall provide the Company with a description of the security measures taken; (ii) in case Personal Data is processed by the Customer, such processing shall be carried out in accordance with the provisions of the agreement to which these Conditions apply. The Customer shall explicitly inform its staff, and any persons working under its control, of the provisions of the applicable Data Protection Legislation on privacy protection in relation to the processing of Personal Data.



- 12.4 The disclosure by the Customer of Personal Data to third parties, by whatever means, shall be prohibited, except where it is imposed by, or by virtue of, the law, or in case the prior written and informed approval has been obtained from the Company. The Customer shall ensure that all its staff and persons authorised to process Personal Data have committed themselves to obligations of confidentiality no less onerous than those set out in this Clause, or are under an appropriate statutory obligation of confidentiality.
- 12.5 The Customer shall, unless and to the extent prohibited by applicable law, give the Company written notice as soon as possible upon becoming aware of any breach of this article or of a Personal Data Breach, and in no event later than twenty-four (24) hours after the occurrence of such event. The Customer shall take all steps necessary to investigate and prevent its recurrence. The Company, at its sole discretion, shall determine (in accordance with applicable Data Protection Legislation) whether and when to notify any Data Subjects or data protection authorities regarding a breach. In such case, the Company may, without prejudice to its other rights and remedies, immediately suspend the transfer of any Personal Data to the Customer, require the Customer to immediately return all Personal Data at no cost to the Company and perform a root cause analysis of the breach and its direct and indirect consequences. The Customer shall, at its own initiative but in close consultation with the Company, take any and all appropriate measures in order to minimize the impact such a breach may have upon the Company.
- 12.6 The Customer acknowledges that the obligations of this clause are fundamental to all contracts governed by these Conditions and that any violation thereof could seriously harm the Company's interests and reputation and may moreover have a significant financial impact on the Company and its subsidiaries and affiliates. Therefore, the Customer shall be liable for any damages attributable to any failure on its part to comply with the provisions of this article and/or Data Protection Legislation, irrespective of the limitations of liability set forth in the agreement to which these Conditions apply.
- 12.7 The Company's Privacy Policy concerning the processing of or the access to any personal data by the Company, apply to and form an integral part of these General Conditions and any agreement between the Company and the Customer.

### **13 COMPLIANCE WITH ANTI-CORRUPTION LAWS**

- 13.1 The Company and the Customer each warrant that they will not participate in any form of bribery or corruption and will comply with all laws, rules and regulations governing bribery and corruption in all the countries in which they operate.

### **14 COMPLIANCE WITH P&O FERRYMASTERS BUSINESS PARTNER CODE OF CONDUCT**

- 14.1 The Customer covenants, represents and warrants that it shall comply, and shall procure that its directors, employees, personnel and its subsidiaries comply, with and adhere to the P&O Ferrymasters' Business Partner Code of Conduct ("CoC") and other applicable rules, regulations, policies, guidelines and requirements in the performance of these Conditions, which are available for printing and downloading via the P&O Ferrymasters' website <https://www.poferrymasters.com/about-us/responsibility> which may be amended or updated from time to time. In case of an amendment of the CoC, the new version will be published on the above-mentioned website.
- 14.2 The Customer shall implement all necessary measures to (i) prevent any breach of misconduct under the CoC during the execution of these Conditions and (ii) promptly give notice to the Company of any fact, act or omission that may result in a breach thereof or misconduct thereunder during the execution of these Conditions.

### **15 APPLICABLE LAW AND JURISDICTION**

- 15.1 These conditions shall be subject to English law and all claims and other matters arising in relation to these Conditions and the Services to which they relate, whether arising in contract, tort or otherwise, shall be subject to the exclusive jurisdiction of the High Court of England and Wales.

British International Freight Association Standard Trading Conditions 2021 Edition attached



BRITISH INTERNATIONAL  
FREIGHT ASSOCIATION

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# BRITISH INTERNATIONAL FREIGHT ASSOCIATION (BIFA) STANDARD TRADING CONDITIONS 2021 EDITION (ENGLAND) © BIFA 2021

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**BRITISH INTERNATIONAL FREIGHT ASSOCIATION (BIFA) STANDARD TRADING CONDITIONS  
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**THE CUSTOMER'S ATTENTION IS DRAWN TO SPECIFIC CLAUSES HEREOF WHICH EXCLUDE OR LIMIT THE COMPANY'S LIABILITY AND THOSE WHICH REQUIRE THE CUSTOMER TO INDEMNIFY THE COMPANY IN CERTAIN CIRCUMSTANCES AND THOSE WHICH LIMIT TIME AND THOSE WHICH DEAL WITH CONDITIONS OF ISSUING EFFECTIVE GOODS INSURANCE BEING CLAUSES 7, 8, 10, 11(A) and 11(B) 12-14 INCLUSIVE, 18-20 INCLUSIVE, AND 24-27 INCLUSIVE. THE CUSTOMER'S ATTENTION IS ALSO DRAWN TO CLAUSE 28 WHICH PERMITS ARBITRATION IN CERTAIN CIRCUMSTANCES**

All headings are indicative and do not form part of these conditions

**DEFINITIONS AND APPLICATION**

1 In these conditions the following words shall have the following meanings:-

"Company"	the BIFA member trading under these conditions
"Consignee"	the Person to whom the goods are consigned
"Customer"	any Person at whose request or on whose behalf the Company undertakes any business or provides advice, information or services
"Direct Customs Agent"	the Company acting in the name of and on behalf of the Customer and/or Owner with H.M. Revenue and Customs ("HMRC") as defined by the Taxation (Cross Border Trade) Act 2018, Clause 21.1(a), or as amended
"Goods"	the cargo to which any business under these conditions relates
"Person"	natural person(s) or any body or bodies corporate
"LMAA"	the London Maritime Arbitrators Association
"SDR"	are Special Drawing Rights as defined by the International Monetary Fund
"Transport Unit"	packing case, pallets, container, trailer, tanker, or any other device used whatsoever for and in connection with the carriage of Goods by land, sea or air
"Owner"	the Owner of the Goods or Transport Unit and any other Person who is or may become interested in them

2(A) Subject to sub-paragraph (B) below, all and any activities of the Company in the course of business, whether gratuitous or not, are undertaken subject to these conditions.

(B) If any legislation, to include regulations and directives, is compulsorily applicable to any business undertaken, these conditions shall, as regards such business, be read as subject to such legislation, and nothing in these conditions shall be construed as a surrender by the Company of any of its rights or immunities or as an increase of any of its responsibilities or liabilities under such legislation, and if any part of these conditions be repugnant to such legislation to any extent, such part shall as regards such business be overridden to that extent and no further.

3 The Customer warrants that he is either the Owner, or the authorised agent of the Owner and, also, that he is accepting these conditions not only for himself, but also as agent for and on behalf of the Owner.



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## THE COMPANY

- 4(A) Subject to clauses 11 and 12 below, the Company shall be entitled to procure any or all of the services as an agent, or, to provide those services as a principal.
- (B) The Company reserves to itself full liberty as to the means, route and procedure to be followed in the performance of any service provided in the course of business undertaken subject to these conditions.
- 5 When the Company contracts as a principal for any services, it shall have full liberty to perform such services itself, or, to subcontract on any terms whatsoever, the whole or any part of such services.
- 6(A) When the Company acts as an agent on behalf of the Customer, the Company shall be entitled, and the Customer hereby expressly authorises the Company, to enter into all and any contracts on behalf of the Customer as may be necessary or desirable to fulfil the Customer's instructions, and whether such contracts are subject to the trading conditions of the parties with whom such contracts are made, or otherwise.
- (B) The Company shall, within 14 days' notice given by the Customer, provide evidence of any contract entered into as agent for the Customer. Insofar as the Company may be in default of the obligation to provide such evidence, it shall be deemed to have contracted with the Customer as a principal for the performance of the Customer's instructions.
- 7 In all and any dealings with HMRC, for and on behalf of the UK established Customer and/or Owner, the Company is deemed to be appointed and duly empowered to act as a Direct Customs Agent only, to make Customs declarations in the name of the Customer (Principal) as their "Direct Agent".
- 8(A) Subject to sub-clause (B) below,
- the Company:
- (i) has a general lien on all Goods and documents relating to Goods in its possession, custody or control for all sums due at any time to the Company from the Customer and/or Owner on any account whatsoever, whether relating to Goods belonging to, or services provided by or on behalf of the Company to the Customer or Owner. Storage charges shall continue to accrue on any Goods detained under lien;
- (ii) shall be entitled, on at least 21 days' notice in writing to the Customer, to sell or dispose of or deal with such Goods or documents as agent for, and at the expense of, the Customer and apply the proceeds in or towards the payment of such sums;
- (iii) shall, upon accounting to the Customer for any balance remaining after payment of any sum due to the Company, and for the cost of sale and/or disposal and/or dealing, be discharged of any liability whatsoever in respect of the Goods or documents.
- (B) When the Goods are liable to perish or deteriorate, the Company's right to sell or dispose of or deal with the Goods shall arise immediately upon any sum becoming due to the Company, subject only to the Company taking reasonable steps to bring to the Customer's attention its intention to sell or dispose of the Goods before doing so.



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- 9 The Company shall be entitled to retain and be paid all brokerages, commissions, allowances and other remunerations customarily retained by, or paid to, freight forwarders.
- 10(A) Should the Customer, Consignee or Owner of the Goods fail to take delivery at the appointed time and place when and where the company is entitled to deliver, the Company shall be entitled to store the Goods, or any part thereof, at the sole risk of the Customer or Consignee or Owner, whereupon the Company's liability in respect of the Goods, or that part thereof, stored as aforesaid, shall wholly cease. The Company's liability, if any, in relation to such storage, shall be governed by these conditions. All costs incurred by the Company as a result of the failure to take delivery shall be deemed as freight earned, and such costs shall, upon demand, be paid by the Customer.
- (B) The Company shall be entitled at the expense of the Customer to dispose of or deal with (by sale or otherwise as may be reasonable in all the circumstances):-
- (i) after at least 21 days' notice in writing to the Customer, or (where the Customer cannot be traced and reasonable efforts have been made to contact any parties who may reasonably be supposed by the Company to have any interest in the Goods) without notice, any Goods which have been held by the Company for 60 days and which cannot be delivered as instructed; and
- (ii) without prior notice, any Goods which have perished, deteriorated, or altered, or are in immediate prospect of doing so in a manner which has caused or may reasonably be expected to cause loss or damage to the Company, or third parties, or to contravene any applicable laws or regulations.
- 11(A) No insurance will be effected except pursuant to and in accordance with clearly stated instructions given in writing by the Customer and accepted in writing by the Company, and all insurances effected by the Company are subject to the usual exceptions and conditions of the policies of the insurers or underwriters taking the risk. Unless otherwise agreed in writing, the Company shall not be under any obligation to effect a separate insurance on the Goods, but may declare it on any open or general policy held by the Company.
- (B) Insofar as the Company agrees to effect insurance, the Company acts solely as agent for the Customer, and the limits of liability under clause 26(A) of these conditions shall not apply to the Company's obligations under clause 11.
- 12(A) Except under special arrangements previously made in writing by an officer of the Company so authorised, or made pursuant to or under the terms of a printed document signed by the Company, any instructions relating to the delivery or release of the Goods in specified circumstances (such as, but not limited to, against payment or against surrender of a particular document) are accepted by the Company, where the Company has to engage third parties to effect compliance with the instructions, only as agents for the Customer.
- (B) Despite the acceptance by the Company of instructions from the Customer to collect freight, duties, charges, dues, or other expenses from the Consignee, or any other Person, on receipt of evidence of proper demand by the Company, and, in the absence of evidence of payment (for whatever reason) by such Consignee, or other Person, the Customer shall remain responsible for such freight, duties, charges, dues, or other expenses.

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- (C) The Company shall not be under any liability in respect of such arrangements as are referred to under sub-clause (A) and (B) hereof save where such arrangements are made in writing, and in any event, the Company's liability in respect of the performance of, or arranging the performance of, such instructions shall not exceed the limits set out in clause 26(A) (ii) of these conditions.
- 13 Advice and information, in whatever form it may be given, is provided by the Company for the Customer only. The Customer shall indemnify the Company against all loss and damage suffered as a consequence of passing such advice or information on to any third party.
- 14 Without prior agreement in writing by an officer of the Company so authorised, the Company will not accept or deal with Goods that require special handling regarding carriage, handling, or security whether owing to their thief attractive nature or otherwise including, but not limited to bullion, currency, securities, precious stones, jewellery, valuables, antiques, pictures, human remains, living creatures, plants. Should any Customer nevertheless deliver any such goods to the Company, or cause the Company to handle or deal with any such goods, otherwise than under such prior agreement, the Company shall have no liability whatsoever for or in connection with the goods, howsoever arising.
- 15 Except pursuant to instructions previously received in writing and accepted in writing by the Company, the Company will not accept or deal with Goods of a dangerous or damaging nature, nor with Goods likely to harbour or encourage vermin or other pests, nor with Goods liable to taint or affect other Goods. If such Goods are accepted pursuant to a special arrangement, but, thereafter, and in the opinion of the Company, constitute a risk to other goods, property, life or health, the Company shall, where reasonably practicable, contact the Customer in order to require him to remove or otherwise deal with the goods, but reserves the right, in any event, to do so at the expense of the Customer.
- 16 Where there is a choice of rates according to the extent or degree of the liability assumed by the Company and/or third parties, no declaration of value will be made and/or treated as having been made except under special arrangements previously made in writing by an officer of the Company so authorised as referred to in clause 26(D).

**THE CUSTOMER**

- 17 The Customer warrants:
- (A) (i) that the following (furnished by on or behalf of the Customer) are full and accurate: the description and particulars of any Goods; any information furnished (including but not limited to, the nature, gross weight, gross mass (including the verified actual gross mass of any container packed with packages and cargo items), and measurements of any Goods); and the description and particulars of any services required by or on behalf of the Customer are full and accurate, and
- (ii) that any Transport Unit and/or equipment supplied by the Customer in relation to the performance of any requested service is fit for purpose;
- (B) that all Goods have been properly and sufficiently prepared, packed, stowed, labelled and/or marked, and that the preparation, packing, stowage, labelling and marking are appropriate to any operations or transactions affecting the Goods and the characteristics of the Goods.



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- (C) that where the Company receives the Goods from the Customer already stowed in or on a Transport Unit, the Transport Unit is in good condition, and is suitable for the carriage to the intended destination of the Goods loaded therein, or thereon;
  - (D) that where the Company provides the Transport Unit, on loading by the Customer, the Transport Unit is in good condition, and is suitable for the carriage to the intended destination of the Goods loaded therein, or thereon.
- 18 Without prejudice to any rights under clause 15, where the Customer delivers to the Company, or causes the Company to deal with or handle Goods of a dangerous or damaging nature, or Goods likely to harbour or encourage vermin or other pests, or Goods liable to taint or affect other goods, whether declared to the Company or not, he shall be liable for all loss or damage arising in connection with such Goods, and shall indemnify the Company against all penalties, claims, damages, costs and expenses whatsoever arising in connection therewith, and the Goods may be dealt with in such manner as the Company, or any other person in whose custody they may be at any relevant time, shall think fit.
- 19 The Customer undertakes that no claim shall be made against any director, servant, or employee of the Company which imposes, or attempts to impose, upon them any liability in connection with any services which are the subject of these conditions, and, if any such claim should nevertheless be made, to indemnify the Company against all consequences thereof.
- 20 The Customer shall save harmless and keep the Company indemnified from and against
- (A) all liability, loss, damage, costs and expenses whatsoever (including, without prejudice to the generality of the foregoing, all duties, taxes, imposts, levies, deposits and outlays of whatsoever nature levied by any authority in relation to the Goods) arising out of the Company acting in accordance with the Customer's instructions, or arising from any breach by the Customer of any warranty contained in these conditions, or from the negligence of the Customer;
  - (B) without derogation from sub-clause (A) above, any liability assumed, or incurred by the Company when, by reason of carrying out the Customer's instructions, the Company has become liable to any other party;
  - (C) all claims, costs and demands whatsoever and by whomsoever made or preferred, in excess of the liability of the Company under the terms of these conditions, regardless of whether such claims, costs, and/or demands arise from, or in connection with, the breach of contract, negligence or breach of duty of the Company, its servants, sub-contractors or agents;
  - (D) any claims of a general average nature which may be made on the Company.
- 21(A) The punctual receipt in full of sums falling due from the Customer to the Company is critical to the operation of the Company's business and its performance of its obligations to the Customer. Accordingly the Customer shall pay to the Company in cash, or as otherwise agreed, all sums when due, immediately and without reduction or deferment on account of any claim, counterclaim or set-off. Time is of the essence of payment of all and any sums payable by the Customer to the Company.
- (B) In the event of any failure by the Customer to make full and punctual payment of any sum payable to the Company (in accordance with clause 21(A) above):

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(i) Any and all other sums properly earned by and/or otherwise due to the Company (but which, but for this clause 21(B), would otherwise not yet be payable by the Customer, whether by virtue of an agreed credit period or otherwise) shall become immediately payable in full; and

(ii) Any sum thereby becoming immediately payable shall be paid to the Company in cash, or as otherwise agreed, and without reduction or deferment on account of any claim, counterclaim or set-off.

(C) No omission to seek compensation for breach of 21(A) and (B) above by the Company shall constitute a waiver or release to the Customer from any liability under 21(A) and (B) above during the application of these terms unless agreed in writing by authorised officers of the Company and Customer.

(D) The Late Payment of Commercial Debts (Interest) Act 1998, as amended, shall apply to all sums due from the Customer.

22 Where liability arises in respect of claims of a general average nature in connection with the Goods, the Customer shall promptly provide security to the Company, or to any other party designated by the Company, in a form acceptable to the Company.

**LIABILITY AND LIMITATION**

23 The Company shall perform its duties with a reasonable degree of care, diligence, skill and judgment.

24 The Company shall be relieved of liability for any loss or damage if, and to the extent that, such loss or damage is caused by:-

(A) strike, lock-out, stoppage or restraint of labour, the consequences of which the Company is unable to avoid by the exercise of reasonable diligence; or

(B) any cause or event which the Company is unable to avoid, and the consequences of which the company is unable to prevent by the exercise of reasonable diligence.

25 Except under special arrangements previously made in writing by an officer of the Company so authorised, the Company accepts no responsibility with regard to any failure to adhere to agreed departure or arrival dates of Goods.

26(A) Subject to clause 2(B) and 11(B) above and sub-clause (D) below, the Company's liability howsoever arising and, notwithstanding that the cause of loss or damage be unexplained, shall not exceed:

(i) in the case of claims for loss or damage to Goods:

(a) the value of any loss or damage; or

(b) a sum at the rate of 2 SDR per kilo of the gross weight of any Goods lost or damaged

whichever shall be the lesser.





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(ii) subject to (iii) below, in the case of all other claims:

(a) the value of the subject Goods of the relevant transaction between the Company and its Customer; or

(b) where the weight can be defined, a sum calculated at the rate of 2 SDR per kilo of the gross weight of the subject Goods of the said transaction; or

(c) 75,000 SDR in respect of any one transaction,

whichever shall be the lesser.

(iii) in the case of an error and/or omission, or a series of errors and/or omissions which are repetitions of or represent the continuation of an original error and/or omission:

(a) the loss incurred; or

(b) 75,000 SDR in the aggregate of any one trading year commencing from the time of the making of the original error and/or omission,

whichever shall be the lesser.

For the purposes of clause 26(A), the value of the Goods shall be their value when they were, or should have been, shipped. The value of SDR shall be calculated as at the date when the claim is received by the Company in writing.

(B) Subject to clause 2(B) above and sub-clause (D) below, the Company's liability for loss or damage as a result of failure to deliver, or arrange delivery of goods, in a reasonable time, or (where there is a special arrangement under Clause 25) to adhere to agreed departure or arrival dates, shall not in any circumstances whatever exceed a sum equal to twice the amount of the Company's charges in respect of the relevant contract.

(C) Save in respect of such loss or damage as is referred to at sub-clause (B), and subject to clause 2(B) above and sub-clause (D) below, the Company shall not in any circumstances whatsoever be liable for indirect or consequential loss such as (but not limited to) loss of profit, loss of market, or the consequences of delay or deviation, however caused.

(D) On clearly stated instructions in writing declaring the commodity and its value, received from the Customer and accepted by the Company, the Company may accept liability in excess of the limits set out in sub-clauses (A) to (C) above upon the Customer agreeing to pay the Company's additional charges for accepting such increased liability. Details of the Company's additional charges will be provided upon request.

27(A) Any claim by the Customer against the Company arising in respect of any service provided for the Customer, or which the Company has undertaken to provide, shall be made in writing and notified to the Company within 14 days of the date upon which the Customer became, or ought reasonably to have become, aware of any event or occurrence alleged to give rise to such claim, and any claim not made and notified as aforesaid shall be deemed to be waived and absolutely barred, except where the Customer can show that it was impossible for him to comply with this time limit, and that he has made the claim as soon as it was reasonably possible for him to do so.

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- (B) Notwithstanding the provisions of sub-paragraph (A) above, the Company shall in any event be discharged of all liability whatsoever and howsoever arising in respect of any service provided for the Customer, or which the Company has undertaken to provide, unless suit be brought and written notice thereof given to the Company within nine months from the date of the event or occurrence alleged to give rise to a cause of action against the Company.

**JURISDICTION AND LAW**

28 (A) These conditions and any act or contract to which they apply shall be governed by English law.

(B) Any dispute arising out of any act or contract to which these Conditions apply shall, save as provided in (C) below, be subject to the exclusive jurisdiction of the English courts.

(C) Notwithstanding (B) above, the Company is entitled to require any dispute to be determined by arbitration.

(D) The Company may exercise its rights under (C) above either by itself commencing arbitration in respect of a dispute or by giving written notice to the Customer requiring a dispute to be determined by arbitration.

(E) In the event that the Company exercises its rights under (C) above, the corresponding arbitration shall be conducted as follows:

(i) Where the amount claimed by the claimant is less than £400,000, excluding interest, (or such other sum as the Company and Customer may agree, and subject to (iii) below), the reference shall be to a tribunal of three arbitrators and the arbitration shall be conducted in accordance with the LMAA Intermediate Claims Procedure applicable at the date of the commencement of the arbitration proceedings;

(ii) Where the amount claimed by the claimant is less than £100,000, excluding interest, (or such other sum as the Company and Customer may agree, and subject to (iii) below), the reference shall be to a sole arbitrator and the arbitration shall be conducted in accordance with the LMAA Small Claims Procedure applicable at the date of the commencement of the arbitration proceedings;

(iii) In any case where neither of the LMAA Procedures referred to in (i) and/or (ii) above applies, the reference shall be to three arbitrators in accordance with the LMAA Terms applicable at the date of the commencement of the arbitration proceedings.

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