

## TERMS & CONDITIONS OF SUPPLY OF GOODS AND SERVICES (FINANCE COMPANY)

### 1. INTERPRETATION

#### 1.1 Definitions:

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

"**Conditions**" means the terms and conditions set out in this document

"**Contract**" means the contract between the Supplier and the Customer for the sale and purchase of the Goods and/or Services in accordance with these Conditions.

"**Cooling Equipment**" means equipment or machinery designed to regulate the temperature of the interior of a Shipping Container.

"**Customer**" means the person or firm who purchases the Goods and/or Services from the Supplier.

"**Customer Order Confirmation**" means the Supplier's confirmation and clarification of the Order, to be accepted by the Customer (whether in writing or orally) prior to supply of the Goods or provision of the Services.

"**Data Protection Legislation**" means (i) until the GDPR comes into force in the UK, the Data Protection Act 1998; (ii) for so long as GDPR is directly applicable in the UK, it shall mean GDPR and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK; and (iii) any successor legislation to the GDPR or the Data Protection Act 1998.

"**Finance Company**" means the business or entity providing the finance for purchase of the Goods as recorded on the Customer Order Confirmation.

"**GDPR**" means the General Data Protection Regulation ((EU) 2016/679)

"**Goods**" means the goods (or any part of them) set out in the Order, including any Shipping Container. This will include not just a shipping container, but also physical items specifically set out in the Customer Order Confirmation (such as, for example, air conditioning units), but not services performed in relation to such items (e.g. installation).

"**Intellectual Property Rights**" means patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

"**Liability**" means direct or indirect liability under any legal theory, including without limitation contract, tort (including negligence), breach of statutory duty, indemnity, or otherwise, in each case arising out of, in relation to or in connection with the Contract.

"**Order**" means the Customer's order for the Goods and/or Services, as set out in the Customer's purchase order form (or on rare occasions the Customer's oral request for the provision of Goods and/or Services where no order form is used), as amended by the relevant Customer Order Confirmation (where applicable).

"**Refrigerated Unit**" shall mean a Shipping Container which both (i) contains or includes Cooling Equipment upon Delivery; and (ii) is expressly stated to be a Refrigerated Unit in the Customer Order Confirmation.

"**Services**" means the services to be supplied by the Supplier to the Customer as set out in the Services Specification (including any components or items supplied as an incidental part of supplying the Services).

"**Shipping Container**" shall mean a container originally designed to contain goods during transportation by ship or other water-borne vessel, including where applicable any Refrigerated Unit.

"**Specification**" means any specification for the Goods and/or Services, including any related plans and drawings, that is set out in the Customer Order Confirmation. The Specification for the Goods is the "**Goods Specification**", and the Specification for the Services is the "**Services Specification**".

"**Supplier**" means Lion Containers Limited (registered in England and Wales with company number 07944912).

#### 1.2 Interpretation:

1.2.1 A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.

1.2.2 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.

1.2.3 A reference to **writing** or **written** includes faxes and emails.

1.2.4 By way of example only, where a Customer placed an Order for a Shipping Container to be supplied and painted yellow, then the Shipping Container would constitute Goods, and the painting would constitute Services.

### 2. BASIS OF CONTRACT

2.1 These Conditions apply to the Contract to the exclusion of any other terms that the Customer and/or the Finance Company seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing. For the avoidance of doubt, this clause 2.1 is without prejudice to any separate agreements between the Customer and the Finance Company to which the Supplier is not a party.

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

2.3 The Order shall only be deemed to be accepted when both:

2.3.1 the Supplier issues a written acceptance of the Order in the form of the Customer Order Confirmation, and the Customer Order Confirmation is either (i) expressly accepted by the Customer by signature, email or clicking a button to indicate acceptance; or (ii) not objected to by the Customer before the earlier of commencement of performance of the Contract by the Supplier or three Business Days after it was sent by the Supplier; and

2.3.2 the Finance Company indicates acceptance of these Conditions either (i) in writing, or (ii) by making a payment to the Supplier; at which point the Contract shall come into existence.

2.4 The Customer and the Finance Company both waive any right either of them might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Customer and/or Finance Company that is inconsistent with these Conditions.

2.5 Any samples, drawings, descriptive matter or advertising produced by the Supplier and any descriptions or illustrations contained in the Supplier's catalogues, brochures or websites are produced for the sole purpose of giving an approximate idea of the Goods and/or Services referred to in them. They shall not form part of the Contract nor have any contractual force. Unless otherwise stated in the Customer Order Confirmation, a Shipping Container will be the next available such container which complies with the Customer Order Confirmation, rather than any container seen or examined by the Customer.

2.6 A quotation given by the Supplier shall not constitute an offer. A quotation shall only be valid for a period of 7 days from its date of issue (or 24 hours in the case of a discounted quotation).

2.7 Any advice or comment made by the Supplier's personnel, whether oral or written, is not a representation or warranty on behalf of the Supplier unless expressly incorporated into the Customer Order Confirmation; accordingly, subject to clause 12.2, no Liability whatsoever shall accrue against the Supplier in relation to such advice or comment.

2.8 The Supplier shall not verify, certify, investigate or take any other action in relation to whether the Goods (or any other goods on which Services are performed) shall, when used by the Customer, satisfy any Building Regulations or other applicable rules or regulations. It shall be for the Customer to ensure such compliance and to state in the Specification any necessary requirements.

- 2.9 All of these Conditions shall apply to both Goods and Services except where application to only one or the other is specified.
- 3. GOODS**
- 3.1 The Goods are described in the Goods Specification. The Goods are not warranted as being fit for any specific use or purpose that is not expressly set out in the Goods Specification.
- 3.2 Where a Shipping Container is described as "new", it will have been used on one occasion only to transport cargo by sea. Where a Shipping Container is described as "used", it will have been used on multiple occasions to transport cargo by sea, and may have been used for various other purposes (including further cargo transportation by land and/or sea, or storage). In both cases, due to the nature of the use prior to being sold under this Contract, it is likely to have bangs, scrapes, rust, corrugation damage and paint damage – none of which shall constitute a defect or non-conformity dealt with under clause 5 below, or otherwise give rise to a liability on the part of the Supplier hereunder.
- 3.3 Further to clause 3.2 above, where a Shipping Container is described as "As Is", then the Customer is aware and acknowledges that it is unlikely to be wind or water-tight, and is likely to require repair work prior to being put to any use by the Customer.
- 3.4 The Supplier does not warrant that any CSC plate shown on a Shipping Container remains valid, as the Shipping Container may have undergone modification since that certification which invalidates it (whether or not such modifications are part of Services entered into under this Contract). If the Customer wishes to purchase a Shipping Container with valid CSC certification, then this must have been included in the quotation and the Order (or else it will constitute a variation to this Contract to be agreed in accordance with clause 14.4).
- 3.5 Grafo-therm treatment is applied to the roof only of Shipping Containers as standard. By the nature of such treatment, some over-spray will occur and the Customer expressly acknowledges that he is aware that over-spray will occur. If additional treatment is required by the Customer, then this must have been included in the quotation and the Order (or else it will constitute a variation to this Contract to be agreed in accordance with clause 14.4).
- 3.6 Where the Goods include electrical or other equipment (such as Shipping Containers previously or intended to be used as offices, toilets or other accommodation-type uses), then no electrical, mechanical or other testing has taken place in relation to that equipment unless expressly so stated in the Customer Order Confirmation. Even where such testing has taken place, it is likely that such testing and any consequent certification will become invalid upon the Goods being loaded and/or moved to the Delivery Location. It is the responsibility of the Customer to test and verify (and, where applicable, certify or obtain certification for) such equipment prior to allowing its employees and/or any other persons to come into contact with or proximity of the Goods.
- 3.7 Subject to clause 12.2, the Customer shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by the Supplier in connection with any claim made against the Supplier arising out of or in connection with the Supplier's supply of the Goods in compliance with the Goods Specification. This clause 3.7 shall survive termination of the Contract.
- 3.8 The Supplier reserves the right to amend the Goods Specification if required by any applicable statutory or regulatory requirements.
- 3.9 Shipping Containers do not include a lock or lockbox as standard. If the Customer wishes to purchase a Shipping Container with a lock and/or a lockbox, then this must have been expressly included in the quotation and the Order (or else it will constitute a variation to this Contract to be agreed in accordance with clause 14.4).
- 3.10 The supply of a Shipping Container does not include the application of decals or stickers (including the re-application of such decals or stickers previously present, for example where Services such as painting are to be performed on the Shipping Container) as standard. If the Customer wishes to purchase a Shipping Container with decals or stickers applied or re-applied, then this must have been included in the quotation and the Order (or else it will constitute a variation to this Contract to be agreed in accordance with clause 14.4).
- 3.11 For the avoidance of doubt, the Supplier may choose to supply a Shipping Container containing or including Cooling Equipment even where a Refrigerated Unit is not specified in the Customer Order Confirmation. Such a Shipping Container shall not constitute a Refrigerated Unit, and the Cooling Equipment shall enjoy no warranty or guarantee whatsoever (including without limitation the warranty set out in clause 5.1 and the Cooling Equipment Warranty).
- 4. DELIVERY OF GOODS**
- 4.1 In relation to delivery:
- 4.1.1 the Supplier uses a number of different delivery contractors depending on a number of factors (including location, nature of the Goods and availability), so it is not possible for the Supplier to guarantee a particular delivery contractor nor the particular content of (or indeed presence of) a delivery note. If the Customer requires a delivery note, then it is the Customer's responsibility to arrange this separately with the driver of the delivery vehicle; and
- 4.1.2 if the Supplier requires the Customer to return any packaging materials to the Supplier, that will be communicated to the Customer on or prior to delivery. The Customer shall make any such packaging materials available for collection at such times as the Supplier shall reasonably request. Returns of packaging materials shall be at the Supplier's expense.
- 4.2 The Supplier shall deliver the Goods to the location set out in the Customer Order Confirmation or such other location as the Customer and Supplier may agree ("**Delivery Location**") after the Supplier notifies the Customer that the Goods are ready for despatch as further specified in clause 4.4 below. The Customer warrants that the Delivery Location stated in the Customer Order Confirmation is the actual location to which Delivery shall take place, and acknowledges that where it or its representative seeks to meet the Supplier's delivery contractor at the stated Delivery Location to request that Delivery take place elsewhere (whether nearby or otherwise), then this may not be possible and is likely to give rise to additional charges being made in accordance with clause 4.10. This will apply notwithstanding any comments made by the Customer in its Order implying that the Delivery Location stated is not the actual place of Delivery.
- 4.3 Delivery is completed either:
- 4.3.1 Upon unloading the Goods from the delivery vehicle at the Delivery Location (where the Supplier is delivering the Goods to the Customer); or
- 4.3.2 Upon loading the Goods on to the delivery vehicle at the Delivery Location (where the Customer is collecting the Goods from the location at which they are stored by the Supplier);
- in either case such completion being "**Delivery**".
- 4.4 Any dates quoted for Delivery are approximate only, and the time of Delivery is not of the essence. The Supplier shall not be liable for any delay in Delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods. Further, subject to any Delivery Location opening times specified in the Order and accepted in the Customer Order Confirmation, Delivery may take place at any time of day. Due to a number of factors, including traffic, the Supplier is unable to guarantee any particular delivery time or slot. In relation to Delivery:
- 4.4.1 The Supplier shall notify the Customer when the Goods are ready for despatch;
- 4.4.2 The Supplier shall indicate which date(s) are available for Delivery of the Goods within a period of 10 Business Days following notification under clause 4.4.1 ("**Delivery Window**") (and the Customer acknowledges that the Supplier will be dependent upon the availability of its delivery contractor in this respect);
- 4.4.3 The Customer must select one of those dates (or that date, where only one is proposed) for Delivery, whereupon it will become the "**Agreed Date**"; and
- 4.4.4 If the Customer does not select a date as being the Agreed Date, then the Agreed Date will be deemed to have been the final day of the Delivery Window and the Customer will be further deemed to have not accepted Delivery of the Goods on the Agreed Date. For the avoidance of doubt, clause 4.5 below shall not apply in such circumstances.
- 4.5 If the Supplier fails to deliver the Goods on an Agreed Date, then the Customer shall fix a revised date on which delivery of the Goods shall take place (which must be reasonable in all the circumstances, including without limitation availability of the Supplier's delivery contractor, failing

which a reasonable date will be substituted as the revised date). In the event that the Supplier is unable to deliver the Goods on or before the revised date, its liability shall be limited exclusively to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. The Supplier shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event, the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods, or any other breach of this Contract by the Customer.

- 4.6 If the Customer fails to accept Delivery of the Goods on the Agreed Date, or fails to select an Agreed Date in accordance with clause 4.4 above, or if Delivery cannot be made as a result of a breach of clause 4.11 or 4.12 below by the Customer, then, except where such failure or delay is caused by a Force Majeure Event or the Supplier's failure to comply with its obligations under the Contract which relate to the Goods:
- 4.6.1 Delivery of the Goods shall be deemed to have been completed at 9.00 am on the Business Day after the Agreed Date (including where this is deemed in accordance with clause 4.4.4 above), and any payments stated to be due from the Customer on or prior to Delivery shall become immediately due and payable;
- 4.6.2 the Supplier shall be entitled to issue its invoice in relation to any other payments which are stated as falling due upon the expiry of a certain period from the date of issue and/or receipt of invoice, and such payment(s) shall fall due upon the expiry of such period; and
- 4.6.3 the Supplier shall store the Goods until Delivery takes place, and charge the Customer for all related costs and expenses (including additional transport costs, gate fees and insurance) plus an administrative fee of 10% thereof. For the avoidance of doubt, the full amount of such costs and expenses will be charged in these circumstances even where it was agreed in the Customer Order Confirmation that the Customer would receive discounted transportation costs.
- 4.7 If three Business Days after the Agreed Date the Customer has not accepted delivery of the Goods nor proposed a revised Delivery date acceptable to the Supplier (acting in its absolute discretion), the Supplier may resell or otherwise dispose of part or all of the Goods.
- 4.8 The Supplier may deliver the Goods by instalments (including where applicable delivering accessories separate from the shipping container to which they relate), which shall be invoiced and paid for separately. Any delay in Delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.
- 4.9 Where the Customer wishes to cancel or re-schedule a Delivery, it must contact the Supplier as far in advance of the estimated readiness to despatch date as possible. The Supplier will inform the Customer whether such cancellation or re-scheduling is possible, and if so will set out the cost of doing so.
- 4.10 Where a Delivery is cancelled or re-scheduled in accordance with clause 4.9 above, or where Delivery is unable to be completed at the Delivery Location for reasons not attributable to the Supplier (for example, failure by the Customer to give accurate or complete information regarding the Delivery Location (including failure to comply with clauses 4.11 and 4.12 below), absence of a Customer representative to take delivery at the Delivery Location etc), then the Customer shall be responsible for, and the Supplier may invoice the Customer at any time thereafter for all costs and expenses incurred by the Supplier, including without limitation costs incurred by the Supplier to its delivery contractor for Delivery and return (which may be higher than those listed in the quotation), gate fees, depot fees, lift fees, hire fees and any other cost or expense whatsoever.
- 4.11 It shall be the Customer's obligation to ensure that the Supplier's delivery contractor is able to gain access to the Delivery Location to make the Delivery. The Customer is aware that the vehicle used to deliver the Goods may be up to 68 feet long and up to 10 feet wide, regardless of the size of the Goods; the Customer must take this into account when specifying the Delivery Location. Furthermore, the Customer warrants that Delivery at the Delivery Location shall not require the delivery vehicle to traverse, unload or park on mud, grass or other unsuitable or unstable surface (the determination of both vehicle routing and Goods off-load shall be at the sole discretion of the delivery vehicle driver or crane operator). Where damage is caused to the delivery vehicle, the Goods or any aspect of the Delivery Location, this shall be for the Customer's account and the Customer shall indemnify the Supplier for any costs and expenses arising therefrom.
- 4.12 The Customer must ensure that there is a level, hard-standing area on which the Goods can be unloaded at the Delivery Location (failing which there are likely to be issues with the stability of the Goods and the opening of its doors). This area should be immediately parallel with the area in which the delivery vehicle parks and there must be no requirement to lift the Goods over any obstacles.
- 4.13 A period of 30 minutes is allocated for assisting the Customer with delivery, based on a "standard" off-load where the Customer has complied with clause 4.11 and 4.12. Where for any reason not attributable to the Supplier's breach of this Contract the time required to effect Delivery is in excess of 30 minutes, the Customer shall be liable for (and shall pay immediately upon invoice) additional charges under this clause 4.13. Such time shall be charged at the rate of £65 plus VAT per hour, with part-hours being charged as a full hour. In addition, in such circumstances the Customer shall upon invoice pay any additional fees, costs or expenses incurred by the Supplier as a result thereof, including fees due to the delivery contractor, gate fees, depot fees, lift fees, hire fees and any other fee, cost or expense whatsoever.

## 5. QUALITY OF GOODS

- 5.1 The Supplier warrants to the Customer that on Delivery the Goods (excluding any Cooling Equipment) shall:
- 5.1.1 conform in all material respects with the Goods Specification; and
- 5.1.2 be fit for any purpose expressly stated in the Customer Order Confirmation.
- together, "**Standard Warranty**". For the avoidance of doubt, the Standard Warranty is not made for the benefit of the Finance Company, who will acquire no rights or remedies under this clause 5 whatsoever.
- 5.2 Subject to clause 5.3, if:
- 5.2.1 the Customer gives notice in writing to the Supplier within a reasonable time of Delivery (not more than 3 Business Days) that some or all of the Goods do not comply with the Standard Warranty;
- 5.2.2 the Supplier is given a reasonable opportunity of examining such Goods; and
- 5.2.3 the Customer (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business at the Customer's cost or allows the Supplier to collect them,
- the Supplier shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full. Where a Contract includes both Goods and Services but no separate price is stated for each element, then the Supplier shall (acting reasonably) determine that part of the Contract price which is attributable to each of the Goods and Services.
- 5.3 The Supplier shall not be liable for the Goods' failure to comply with the Standard Warranty in any of the following events:
- 5.3.1 the Customer makes any further use of such Goods after giving notice in accordance with clause 5.2;
- 5.3.2 the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;
- 5.3.3 the defect arises as a result of the Supplier following any drawing, design or Goods Specification supplied by the Customer;
- 5.3.4 the Customer alters or repairs such Goods without the written consent of the Supplier;
- 5.3.5 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions (including without limitation placement of the Goods on ground which is not level); or
- 5.3.6 the Goods differ from the Goods Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.
- 5.4 The Standard Warranty shall not apply to any Cooling Equipment. In relation to Cooling Equipment:
- 5.4.1 where the Cooling Equipment is supplied as part of a Shipping Container which is not a Refrigerated Unit, then the Customer accepts that such Cooling Equipment may or may not be operational, defective or otherwise at the time of Delivery or thereafter, and the Cooling Equipment Warranty shall not apply to such Cooling Equipment. If the Customer chooses to operate Cooling Equipment to

- which this clause 5.4.1 applies, then they shall do so entirely at their own risk and they acknowledge that the Supplier has no Liability whatsoever for the consequences of such operation or attempted operation;
- 5.4.2 where the Cooling Equipment is supplied as part of a Refrigerated Unit (such Cooling Equipment being "**Warranted Cooling Equipment**"), then the Cooling Equipment Warranty shall apply in relation to the Cooling Equipment (with the Standard Warranty applying to the remainder of the Refrigerated Unit).
- 5.5 Subject to clauses 5.6 & 5.7, the Supplier warrants to the Customer that upon Delivery and for such further period (if any) as is specified in the Customer Order Confirmation, the Warranted Cooling Equipment shall (i) conform in all material respects with any part of the Goods Specification expressly applicable to it; and (ii) be fit for any purpose expressly stated in the Customer Order Confirmation (together, "**Cooling Equipment Warranty**"). For the avoidance of doubt, the Cooling Equipment Warranty is not made for the benefit of the Finance Company, who will acquire no rights or remedies under this clause 5 whatsoever.
- 5.6 Subject to clause 5.7, if:
- 5.6.1 the Customer gives notice in writing to the Supplier (i) within a reasonable time of Delivery (not more than 1 Business Day); or (ii) (if the Cooling Equipment Warranty extends past delivery in accordance with clause 5.5, then whilst the Cooling Equipment Warranty continues to operate) within 1 Business Day of discovery of the non-compliance; that the Warranted Cooling Equipment does not comply with the Cooling Equipment Warranty;
- 5.6.2 the Supplier is given a reasonable opportunity of examining such Warranted Cooling Equipment; and
- 5.6.3 the Customer (if asked to do so by the Supplier) returns the applicable Refrigerated Unit to the Supplier's place of business at the Customer's cost or allows the Supplier to collect it,
- the Supplier shall, at its option, repair or replace the defective Warranted Cooling Equipment, or refund the price of the Refrigerated Unit containing the defective Warranted Cooling Equipment in full. Where a Contract includes both the Refrigerated Unit containing the defective Warranted Cooling Equipment in full and other Goods and/or Services but no separate price is stated for each element, then the Supplier shall (acting reasonably) determine that part of the Contract price which is attributable to the Refrigerated Unit containing the defective Warranted Cooling Equipment.
- 5.7 The Supplier shall not be liable for the Warranted Cooling Equipment's failure to comply with the Cooling Equipment Warranty in any of the following events:
- 5.7.1 anyone other than the Supplier or its subcontractor installs, commissions or PTI (pre-transport inspection) tests the Warranted Cooling Equipment following Delivery;
- 5.7.2 the Customer makes any further use of such Warranted Cooling Equipment after giving notice in accordance with clause 5.6;
- 5.7.3 the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the cleaning, use and maintenance of the Warranted Cooling Equipment and/or Refrigerated Unit (including without limitation those instructions set out in clause 8.1.12) and good trade practice regarding the same;
- 5.7.4 the Customer alters or repairs such Warranted Cooling Equipment without the written consent of the Supplier, and/or incorporates spare parts into the Warranted Cooling Equipment which have not been expressly approved in writing by the Supplier for the Warranted Cooling Equipment;
- 5.7.5 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions (including without limitation placement of the Refrigerated Unit containing the Warranted Cooling Equipment on ground which is not level); or
- 5.7.6 the Warranted Cooling Equipment differs from the Goods Specification as a result of changes made to ensure that it complies with applicable statutory or regulatory requirements.
- 5.8 Except as provided in this clause 5 and subject to clause 12.2, the Supplier shall have no Liability whatsoever to the Customer nor the Finance Company in respect of (i) the Goods' failure to comply with the Standard Warranty, (ii) any Warranted Cooling Equipment's failure to comply with the Cooling Equipment Warranty; or (iii) any defect in the Goods.
- 5.9 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.
- 5.10 These Conditions shall apply to any repaired or replacement Goods supplied by the Supplier.
- 5.11 Where the Supplier or its agent(s) attends a site designated by the Customer to assess, repair, modify or otherwise deal with Goods in circumstances where such activity is not an obligation of the Supplier under either the Standard Warranty or the Cooling Equipment Warranty (including where the attendance was for the purposes of determining whether such an obligation applied), then:
- 5.11.1 the request to do so by the Customer shall constitute a Customer Default, and the provisions of clause 8.2 shall apply in relation thereto; and
- 5.11.2 the Supplier shall be entitled to charge the Customer at its standard rates (for its own personnel) or the rates of its subcontractors plus a 10% mark-up for subcontractor personnel, and such attendance (and any activities performed during such attendance) shall comprise Services added to the Contract in accordance with clause 14.4.
- 6. TITLE AND RISK**
- 6.1 The risk in the Goods shall pass to the Customer on Delivery. Notwithstanding any separate allocation of risk between the Customer and the Finance Company in any separate agreement between them, as between the Supplier and the Customer risk in the Goods shall continue to remain with the Customer thereafter.
- 6.2 Title to the Goods shall pass to the Finance Company after both (i) Delivery has occurred and (ii) the Supplier receives payment in full (in cash or cleared funds) for the Goods.
- 6.3 Until title to the Goods has passed to the Finance Company, the Customer shall:
- 6.3.1 store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;
- 6.3.2 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- 6.3.3 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
- 6.3.4 notify the Supplier immediately if it and/or the Finance Company becomes subject to any of the events listed in clause 11.1; and
- 6.3.5 give the Supplier such information relating to the Goods as the Supplier may require from time to time.
- 6.4 If before title to the Goods passes to the Finance Company the Customer and/or the Finance Company becomes subject to any of the events listed in clause 11.1, then, without limiting any other right or remedy the Supplier may have, the Supplier may at any time:
- 6.4.1 require the Customer to deliver up all Goods in its possession; and
- 6.4.2 if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them (with the Customer indemnifying the Supplier for any liability for costs or expenses arising from any resultant damage).
- 6.5 For the avoidance of doubt, the Supplier shall have no obligations or liabilities whatsoever in relation to any separate arrangements relating to the transfer of title in the Goods from the Finance Company to the Customer.
- 7. SUPPLY OF SERVICES**
- 7.1 The Supplier shall supply the Services to the Customer in accordance with the Services Specification in all material respects.
- 7.2 The Supplier shall use reasonable endeavours to meet any performance dates specified in the Customer Order Confirmation, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services. The Customer acknowledges that the Supplier is reliant on third parties to perform ancillary tasks relating to or forming part of the Services, and that the timely performance of such third parties may be outside the Supplier's practical control.

- 7.3 The Supplier reserves the right to amend the Services Specification if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and the Supplier shall notify the Customer in any such event.
- 7.4 The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill for the industry in which the Supplier operates. The Customer shall be deemed to have accepted the Services as being properly performed in accordance with this clause 7 in the event that it does not notify the Supplier of any defects within 5 Business Days of performance of the Services (or, where the Services are performed on Goods which are then delivered to the Supplier, within 5 Business Days of Delivery). For the avoidance of doubt, the warranty in this 7.4 is not made for the benefit of the Finance Company, who will acquire no rights or remedies under this clause 7 whatsoever.
- 7.5 If:
- 7.5.1 the Customer gives notice in writing to the Supplier within the time limit specified in clause 7.4 that the Services do not meet the standard specified in clause 7.4;
- 7.5.2 the Supplier is given a reasonable opportunity of examining such Services and finds that the Services are in fact defective; and
- 7.5.3 the defect does not arise as a result of the Supplier following any drawing, design or Services Specification supplied by the Customer,
- the Supplier shall, at its option, remedy or reperform the defective Services, or refund the price of the defective Services in full. Where a Contract includes both Goods and Services but no separate price is stated for each element, then the Supplier shall (acting reasonably) determine that part of the Contract price which is attributable to each of the Goods and Services.
- 7.6 Where the Customer has failed to provide, or has incorrectly provided, information which would have been relevant to the Supplier in setting the price of the Services, then the Supplier shall be entitled to increase the price by such amount as it determines, acting reasonably, will compensate if for the additional work or difficulty caused to it.
- 7.7 Where a particular type of product or procedure is identified to be supplied or used as part of performing the Services, then unless expressly stated otherwise in the Customer Order Confirmation this shall be indicative only of the type of product or procedure to be supplied/used, and the Supplier shall be entitled to instead supply/use a functional equivalent.
- 7.8 Where the Services include painting a Shipping Container, then stickers and decals may not be removed unless expressly so stated in the Customer Order Confirmation. For the avoidance of doubt, such stickers and decals are unlikely to be valid following performance of the Services and the Supplier does not warrant them to be valid.
- 7.9 Where the Services include any modification of a Shipping Container, this will invalidate any CSC, SWL or other markings ("**Markings**") on the container. The Customer understands and acknowledges that the Shipping Container on which the Services are performed will not therefore be certified as suitable for shipping, load bearing or lifting after performance of the Services. It is the Supplier's usual practice to therefore remove such Markings, but the Customer hereby warrants that it will place no reliance on any such Markings (unless the Customer Order Confirmation expressly states that the Services include adapting or modifying the Shipping Container in such a way that CSC or other certification is maintained or achieved).
- 7.10 The Supplier shall perform no tests or inspections of any goods in relation to which the Services are being performed, other than those expressly stated in the Customer Order Confirmation. It is therefore the responsibility of the Customer to state in the Order any tests which are customary or required in the industry or for the purpose that the Customer intends to use such goods.

## 8. CUSTOMER'S OBLIGATIONS & RESPONSIBILITIES

- 8.1 The Customer shall:
- 8.1.1 ensure that the terms of the Order & Customer Order Confirmation, along with any information it provides in the Services Specification, are complete and accurate;
- 8.1.2 co-operate with the Supplier in all matters relating to the Goods and/or Services, and procure any cooperation of the Finance Company requested or required by the Supplier;
- 8.1.3 provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by the Supplier;
- 8.1.4 provide the Supplier with such information and materials as the Supplier may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;
- 8.1.5 be responsible for any loss or destruction of or damage to any property of the Customer which is in the possession of the Supplier for the performance of the Services (except to the extent that such loss, destruction or damage is directly caused by the negligence of the Supplier).
- 8.1.6 when Services and/or obligations of the Supplier under the Standard Warranty, the Cooling Equipment Warranty or the warranty set out in clause 7.4 (any of which shall be "**Warranty Work**") are to be performed (in whole or in part) at the Customer's premises, to prepare the Customer's premises for the supply of the Services or Warranty Work as applicable;
- 8.1.7 to provide full and safe access to any Goods or goods in relation to which Services or Warranty Work will be performed, including lifting or other equipment (e.g. scissor lifts) – it being acknowledged by the Customer that it will be a failure to comply with this clause 8.1.7 if the Customer is unable to provide the Supplier with full specifications, certification and instruction manuals for such equipment upon the Supplier's request;
- 8.1.8 obtain and maintain all necessary licences, permissions and consents which may be required in relation to the Goods and/or Services before the date on which the Goods are to be delivered or the Services are to start (as applicable) – and for the avoidance of doubt this shall include the Finance Company's permission to deal with the Goods as required under this Contract once title has passed to the Finance Company;
- 8.1.9 comply with all applicable laws, including health and safety laws;
- 8.1.10 keep all materials, equipment, documents and other property of the Supplier ("**Supplier Materials**") at the Customer's premises in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to the Supplier, and not dispose of or use the Supplier Materials other than in accordance with the Supplier's written instructions or authorisation;
- 8.1.11 (except to the extent expressly stated otherwise in the Customer Order Confirmation) perform any stacking, connection, interconnection, operability testing or other testing of any goods supplied by the Supplier either as an ancillary part of providing the Services or as Goods;
- 8.1.12 in relation to Refrigerated Units only:
- 8.1.12.1 any produce to be stored in the Refrigerated Unit must be at the temperature to which the Refrigerated Unit is set before it is placed in the Refrigerated Unit;
- 8.1.12.2 produce must not be stored underneath the Cooling Equipment;
- 8.1.12.3 the temperature of the Refrigerated Unit must be monitored (and a log of such monitoring kept by the Customer) at a frequency of not less than once every 6 hours;
- 8.1.12.4 the exterior wall of the Refrigerated Unit to which the Cooling Equipment is attached must have clearance along its full length and height of not less than 10 feet at all times;
- 8.1.12.5 the Refrigerated Unit must be cleaned at intervals of not more than every 14 days (or, where applicable laws or regulations set a shorter period, such period). Such cleaning must include as a minimum: high-pressure hot water steam cleaning with a non-contaminating and non-corrosive detergent; removal of all debris, bags, dunnage, rubbish, produce and ice; cleaning out of and removal of ice from floor drains, compressor coils and air ducts; and
- 8.1.13 comply with any additional obligations as set out in the Specification.

- 8.2 If the Supplier's performance of any of its obligations under the Contract is prevented or delayed by (i) any act or omission by the Customer or a third party (not contracted by the Supplier); (ii) any failure by the Customer to perform any relevant obligation; or (iii) the Customer's premises being in a condition otherwise than described by the Customer or reasonably expected by the Supplier ("**Customer Default**"):
- 8.2.1 without limiting or affecting any other right or remedy available to it, the Supplier shall 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 in each case to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;
- 8.2.2 the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 8; and
- 8.2.3 the Customer shall reimburse the Supplier on written demand for any costs, expenses or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.
- 8.3 Where the Customer wishes to cancel or re-schedule Services, it must contact the Supplier as far in advance of the estimated performance date as possible. The Supplier will inform the Customer whether such cancellation or re-scheduling is possible, and if so will set out the cost of doing so.
- 8.4 Where Services are cancelled or re-scheduled in accordance with clause 8.3 above, or where the Services are unable to be performed at the location specified in the Order or otherwise specified by the Customer for reasons not attributable to the Supplier (for example, failure by the Customer to give accurate or complete information regarding the performance location, delay in performance by the Customer's contractors scheduled in prior to the Supplier etc), then the Customer shall be responsible for, and the Supplier may invoice the Customer at any time thereafter for all costs and expenses incurred by the Supplier, including without limitation costs incurred by the Supplier to its delivery contractor for delivery and return of any goods or equipment (which may be higher than those listed in the quotation), gate fees, depot fees, lift fees, hire fees and any other cost or expense whatsoever.

## 9. PRICE AND PAYMENT

- 9.1 The price of the Goods and/or Services shall be the price(s) set out in the Customer Order Confirmation.
- 9.2 The Supplier may, by giving notice to both the Customer and the Finance Company at any time up to 5 Business Days before delivery and/or performance, increase the price of the Goods and/or Services to reflect any increase in the cost of the Goods and/or Services that is due to:
- 9.2.1 any factor beyond the Supplier's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
- 9.2.2 any request by the Customer to change the delivery or performance date(s), quantities or types of Goods and/or Services ordered, or the Specification; or
- 9.2.3 any delay caused by any instructions of the Customer or failure of the Customer to give the Supplier adequate or accurate information or instructions.
- 9.3 The price of the Goods and/or Services:
- 9.3.1 excludes amounts in respect of value added tax (VAT), which the Finance Company shall additionally be liable to pay to the Supplier at the prevailing rate as stated in the invoice; and
- 9.3.2 includes the costs and charges of packaging, insurance and transport of the Goods (or goods on which Services are performed), except where a separate delivery charge is specified in the Customer Order Confirmation – in which case such delivery charge shall be invoiced to the Finance Company.
- 9.4 It shall be at the Supplier's discretion prior to accepting a particular Order to require some or all of the price to be paid in advance by the Finance Company, and in such cases the Supplier shall be entitled to invoice for such sums in accordance with its written notification to the Finance Company on a case-by-case basis.
- 9.5 Subject to clause 9.4, the Supplier may invoice the Finance Company (in respect of the sums referred to in clause 9.5.1 and 9.5.2) or the Customer (in respect of the sums referred to in clause 9.5.3):
- 9.5.1 for the price of the Goods on or at any time after the completion of delivery;
- 9.5.2 for the price of the Services on or at any time after the Customer Order Confirmation; and
- 9.5.3 in relation to other sums which become due under these Conditions, at any time after such sums become due.
- 9.6 The Finance Company and/or Customer (as applicable) shall pay each invoice in full and in cleared funds within 5 Business Days of the date of invoice (unless agreed otherwise in the Customer Order Confirmation). Payment shall be made to the bank account nominated in writing by the Supplier. Time for payment is of the essence.
- 9.7 Except as specified otherwise in the Customer Order Confirmation (or otherwise agreed between the parties in writing), the Supplier shall not be obliged to commence supply of the Services or to deliver the Goods prior to payment of all invoices issued under the Contract by the Finance Company and/or Customer (as applicable). Where the scheduled start/delivery date occurs before the invoices have been paid, then the Supplier shall be entitled to postpone the start/delivery date until a reasonable period after such payment (and the Customer acknowledges that, in such circumstances, it may be obliged to wait behind other customers for whom the Supplier has started work in the meantime).
- 9.8 If the Customer and/or Finance Company (as applicable) fails to make any payment due to the Supplier under the Contract by the due date for payment (with the Customer or the Finance Company as applicable being the "Late Payer" in the remainder of this clause 9.8), then the Late Payer shall pay interest on the overdue amount at the rate of 4% per annum above the Bank of England's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Late Payer shall pay the interest together with the overdue amount.
- 9.9 The Finance Company and/or the Customer (as applicable) shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). The Supplier may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.
- 9.10 Where the Finance Company and/or Customer (as applicable) is paying via international payment, then the Customer is responsible for both parties' bank charges and should select "remitter to pay all charges". Where it fails to do so, or where the Supplier is otherwise charged by its bank on the basis of a payment being international, then it will invoice the Customer £25 plus VAT, which is payable immediately upon receipt.

## 10. DATA PROTECTION AND DATA PROCESSING

- 10.1 All parties will comply with all applicable requirements of the Data Protection Legislation. This clause 10 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.
- 10.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the data controller and the Supplier is the data processor (where data controller and data processor have the meanings as defined in the Data Protection Legislation).
- 10.3 Without prejudice to the generality of clause 10.1, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of any and all personal data transferred to the Supplier for the duration and purposes of this Contract.
- 10.4 The Customer acknowledges that the Supplier is reliant on the Customer for direction as to the extent to which the Supplier is entitled to use and process personal data. Consequently, the Supplier will not be liable for any claim brought by a data subject arising from any act or omission by the Supplier, to the extent that such action or omission resulted from the Customer's instructions or failure to adequately instruct the Supplier. The Customer hereby indemnifies and agrees to hold harmless the Supplier against any liability, costs, or damage incurred as a direct or indirect result thereof.

- 10.5 Without prejudice to the generality of clause 10.1, the Supplier shall, in relation to any personal data processed in connection with the performance by the Supplier of its obligations under this Contract:
- 10.5.1 ensure that it has in place appropriate technical and organisational measures 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);
- 10.5.2 ensure that all personnel who have access to and/or process personal data are obliged to keep the personal data confidential; and
- 10.5.3 not transfer any personal data outside of the European Economic Area unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:
- 10.5.3.1 the Customer or the Supplier has provided appropriate safeguards in relation to the transfer;
- 10.5.3.2 the data subject has enforceable rights and effective legal remedies;
- 10.5.3.3 the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any personal data that is transferred; and
- 10.5.3.4 the Supplier complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the personal data;
- 10.5.4 assist the Customer, at the Customer'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; and
- 10.5.5 notify the Customer without undue delay on becoming aware of a personal data breach.
- 10.6 The Customer consents to the Supplier appointing third-party processors of personal data under this Contract.

## **11. TERMINATION**

- 11.1 Without affecting any other right or remedy available to it, the Supplier may terminate this Contract with immediate effect by giving notice to the other parties if:
- 11.1.1 either the Finance Company or the Customer fails to pay any amount due under this Contract on the due date for payment;
- 11.1.2 the Customer commits a material breach of any other term of this Contract which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 7 days after being notified to do so;
- 11.1.3 the Customer repeatedly breaches any of the terms of this Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Contract;
- 11.1.4 either the Finance Company or the Customer suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the IA 1986;
- 11.1.5 either the Finance Company or the Customer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;
- 11.1.6 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of either the Finance Company or the Customer (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;
- 11.1.7 an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the either the Finance Company or Customer (being a company);
- 11.1.8 the holder of a qualifying floating charge over the assets of either the Finance Company or the Customer (being a company) has become entitled to appoint or has appointed an administrative receiver;
- 11.1.9 a person becomes entitled to appoint a receiver over the assets of either the Finance Company or the Customer or a receiver is appointed over the assets of either the Finance Company or the Customer;
- 11.1.10 a creditor or encumbrancer of either the Finance Company or the Customer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of either the Finance Company or the Customer's assets;
- 11.1.11 any event occurs, or proceeding is taken, with respect to either the Finance Company or the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 11.1.4 to clause 11.1.10 (inclusive); or
- 11.1.12 either the Finance Company or the Customer suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.
- 11.2 Without limiting its other rights or remedies, the Supplier may suspend provision of the Goods or Services under the Contract or provision of any goods or services under any other contract between the Customer and the Supplier if either the Finance Company or the Customer becomes subject to any of the events listed in clause 11.1.4 to clause 11.1.10 inclusive, or the Supplier reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment, or if the Finance Company transfers title to the Goods to any person or entity other than the Customer. Where suspension occurs under this clause 11.2, the Customer acknowledges that it may be obliged to wait behind other customers for whom the Supplier has started work in the meantime and therefore the delay may be greater than the period of suspension.
- 11.3 On termination of the Contract:
- 11.3.1 the Customer and Finance Company shall be jointly and severally liable to immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which both the Finance Company and the Customer shall be jointly and severally liable for payment of immediately on receipt;
- 11.3.2 the Customer shall return all of the Supplier Materials (if any). If the Customer fails to do so, then the Supplier may either (i) enter the Customer's premises and take possession of them, or (ii) invoice the Customer for their full replacement value. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract.
- 11.4 Termination of the Contract shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of this Contract that existed at or before the date of termination.
- 11.5 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination shall remain in full force and effect.

## **12. LIMITATION OF LIABILITY**

- 12.1 Without prejudice to clause 12.2, the Supplier's maximum aggregate liability arising out of or relating to this Contract (including any liability for the acts or omissions of its employees, agents and subcontractors and any liability to the Finance Company), whether arising in contract, tort (including negligence), misrepresentation or otherwise, shall in no circumstances exceed the aggregate amount payable by the Customer for Goods and Services supplied under this Contract.

- 12.2 Nothing in this Contract shall exclude or in any way limit:
- 12.2.1 either party's liability for death or personal injury caused by its own negligence;
  - 12.2.2 either party's liability for fraud or fraudulent misrepresentation; or
  - 12.2.3 any other liability which cannot be excluded by law.
- 12.3 This Contract sets forth the full extent of the Supplier's obligations and Liability in respect of the Goods and Services and their provision to the Customer. In particular, there are no conditions, warranties or other terms, express or implied, including as to quality, fitness for a particular purpose or any other kind whatsoever, that are binding on the Supplier except as specifically stated in this Contract. Any condition, warranty or other term concerning the Goods or Services which might otherwise be implied into or incorporated within this Contract, whether by statute, common law or otherwise, is expressly excluded.
- 12.4 Without prejudice to clause 12.2, the Supplier shall have no Liability for (i) the Customer's Consequential Losses and (ii) the Finance Company's Consequential Losses.
- 12.5 In this clause 12, "**Consequential Losses**" means any and all of the following:
- 12.5.1 direct or indirect loss of profits;
  - 12.5.2 direct or indirect loss of sales, revenue, business or opportunity;
  - 12.5.3 direct or indirect loss of agreements or contracts;
  - 12.5.4 direct or indirect loss of anticipated savings;
  - 12.5.5 direct or indirect loss of or damage to goodwill or reputation;
  - 12.5.6 direct or indirect loss of use or corruption of software, data or information;
  - 12.5.7 direct or indirect loss of, damage to or deterioration of goods or items (including produce) stored by the Customer in a Shipping Container and/or a Refrigerated Unit
  - 12.5.8 direct or indirect financial or economic loss; and
  - 12.5.9 any indirect or consequential loss.
- 12.6 For the avoidance of doubt, and without prejudice to clause 12.2, the Supplier's obligations under this Contract (save its obligation to pass title to the Finance Company under clause 6.2) are owed solely and exclusively to the Customer, and shall not confer any remedies or rights (including a right of enforcement) upon the Finance Company.

### 13. FORCE MAJEURE

No party shall be in breach of this Contract nor liable for delay in performing, or failure to perform, any of its obligations under this Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control. In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations. If the period of delay or non-performance continues for four weeks, then the Supplier may terminate this agreement by giving 14 days' written notice to the other parties.

### 14. GENERAL

#### 14.1 Assignment and other dealings.

- 14.1.1 The Supplier may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
- 14.1.2 Neither the Finance Company nor the Customer may assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of their respective rights or obligations under the Contract without the prior written consent of the Supplier.

#### 14.2 Confidentiality.

- 14.2.1 Each party undertakes that it shall not at any time during this Contract, and for a period of five years after termination or expiry of this Contract, disclose to any person any confidential information concerning the business, affairs, customers, Customers or suppliers of the other parties or of any member of the group of companies to which the other parties belong, except as permitted by clause 14.2.2.
- 14.2.2 Each party may disclose the other parties' confidential information:
  - 14.2.2.1 to its employees, officers, representatives or advisers who need to know such information for the purposes of carrying out the party's obligations under this agreement. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses that other party's confidential information comply with this clause 14.2; and
  - 14.2.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 14.2.3 No party shall use any other party's confidential information for any purpose other than to perform its obligations under this Contract.
- 14.2.4 The Customer hereby authorises the Supplier to (and, where personal data of the Customer's personnel is included, the Customer hereby warrants to the Supplier that it has obtained the necessary consent from each such person to):
  - 14.2.4.1 contact it by email, telephone or post regarding other potential transactions, goods or services or general news/updates/marketing;
  - 14.2.4.2 use its name, along with images and a description of the Goods/Services provided under this Contract (including in the form of a case study), on the Customer's website and in other promotional material.
- 14.2.5 If the Customer wishes to revoke the authorisation given in clause 14.2.4 above, it should notify the Supplier in writing (and such revocation shall be effective 3 Business Days after receipt of the notification by the Supplier. For the avoidance of doubt, such revocation shall not oblige the Supplier to locate and collect any promotional material which has passed outside its custody and control.

#### 14.3 Entire agreement.

- 14.3.1 This Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter. This is without prejudice to any separate agreements in place between the Customer and the Finance Company.
- 14.3.2 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

14.4 **Variation.** No variation of this Contract shall be effective unless it is in writing and signed by both the Customer and the Supplier (or their authorised representatives), save that where the amendment affects the price of the Goods and/or Services it shall only be effective when the amendment is also accepted by the Finance Company (either expressly in writing, or implicitly by making a payment to the Supplier following receipt of notification of the intended amendment).

14.5 **Waiver.** No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

14.6 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

#### 14.7 Notices.

- 14.7.1 Any notice given to a party under or in connection with this Contract shall be in writing and shall be:



- 14.7.1.1 delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case);
- 14.7.1.2 sent by fax to its main fax number; or
- 14.7.1.3 sent to the email address listed in the Customer Order Confirmation or otherwise notified the Customer, and for the Supplier to info@lioncontainers.co.uk.
- 14.7.2 Any notice shall be deemed to have been received:
  - 14.7.2.1 if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;
  - 14.7.2.2 if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service (if earlier).
  - 14.7.2.3 if sent by fax or email, at 9.00 am on the next Business Day after transmission.
- 14.7.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.
- 14.8 **Third party rights.** No one other than a party to this Contract and their permitted assignees shall have any right to enforce any of its terms.
- 14.9 **Intellectual Property Rights.**
  - 14.9.1 All Intellectual Property Rights in or arising out of or in connection with the Goods and/or Services (other than Intellectual Property Rights in any materials provided by the Customer) shall be owned by the Supplier.
  - 14.9.2 The Customer grants the Supplier a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify any materials provided by the Customer to the Supplier for the term of the Contract for the purpose of providing the Goods and/or Services to the Customer.
- 14.10 **Snagging.** As a company with a commitment to its customers' satisfaction, the Supplier may be willing to agree a list with the Customer comprising concerns which the Customer has with regards to the Goods or Services which the Supplier is prepared to remedy despite not being obliged to do so under this Contract ("**Snagging List**"). In relation to the Snagging List:
  - 14.10.1 the Supplier shall only consider the inclusion of those items which are notified in writing by the Customer within 3 Business Days of Delivery of the Goods or performance of the Services (as applicable);
  - 14.10.2 the Supplier will notify the Customer as soon as reasonably practicable after receipt of notification (i) those items which it accepts for inclusion on the Snagging List; and (ii) an anticipated timescale estimate for rectification;
  - 14.10.3 the work done towards rectification shall constitute part of the Services once agreed for inclusion in the Snagging List; and
  - 14.10.4 the Supplier will not entertain further proposals for items to be added to the Snagging List after the initial notification.
- 14.11 **Governing law.** The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by and construed in accordance with the law of England and Wales.
- 14.12 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Contract or its subject matter or formation.