

Dated 2024

CPS PACKING SERVICES LIMITED

STANDARD TERMS AND CONDITIONS
FOR THE SUPPLY OF SERVICES

DATED: 25th September 2024

CONWAY PACKING SERVICES LTD

TERMS AND CONDITIONS FOR THE SUPPLY OF SERVICES

THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THE PROVISIONS OF CLAUSES 9 (RISK, LIABILITY AND INSURANCE), 10 (INDEMNITY), 11 (LIMITATION OF LIABILITY) AND 12 (NOTIFICATION OF CLAIMS AND TIME LIMITS FOR BRINGING SUIT)

1 INTERPRETATION

The following definitions and rules of interpretation apply in these Conditions.

1.1 Definitions

- (a) *Business Day*: a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.
- (b) *Carrier*: a third party carrier not engaged by CPS.
- (c) *Charges*: the charges payable by the Customer for the supply of the Services in accordance with clause 15.
- (d) *Commencement Date*: has the meaning given in clause 2.1.3.
- (e) *Conditions*: these terms and conditions as amended from time to time in accordance with clause 22.6.
- (f) *Confidential Information*: means in relation to a party, all information and trade secrets relating to its business which come into the possession of the other party in connection with the Services and/or a Contract, whether orally, or in documentary, electronic, or other form, including the existence and terms of any Contract.
- (g) *Contract*: the contract between CPS and the Customer for the supply of Services in accordance with these Conditions.
- (h) *Control*: has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression *change of Control* shall be construed accordingly.
- (i) *CPS*: means Conway Packing Services Ltd, registered in England under company number 02648068, who is the supplier of the Services under these Conditions.
- (j) *CPS Materials*: means all materials, equipment, documents and other property of CPS.
- (k) *CPS Premises*: means CPS's business premises at Groveland Road, Tipton DY4 7UD or Newfield Road, Oldbury B69 43ET, and/or the premises of any subcontractor of CPS at which the Services may be performed (if applicable), and/or any other site operated by CPS as may be notified by CPS to the Customer.
- (l) *Customer*: the person or firm who purchases Services from CPS.
- (m) *Customer Materials*: means all materials, equipment, documents and other property, other than Goods, belonging to the Customer (or to a third party who has authorised the Customer to contract with CPS) which accompany the Goods.
- (n) *Customer Premises*: a third-party location (whether or not owned or operated by the Customer) not under CPS's operation or control which CPS, its servants, agents, employees and/or subcontractors, attends in connection with or for the purposes of the Services.

- (o) *Customer Default*: has the meaning set out in clause 6.4.
- (p) *Deliverables*: the deliverables (including any designs, drawings, documents, specifications, prototypes, and other intellectual property) generated by CPS in the course of providing Design Services (as defined below).
- (q) *Goods*: goods belonging to the Customer (or to a third party who has authorised the Customer to contract with CPS) in respect of which Services are to be provided, but excluding any Customer Materials.
- (r) *Hazardous Goods*: means any Goods (or part thereof, including any packaging or other materials, substances and articles forming part of the consignment) which are capable of posing a hazard to health, safety, property or the environment, including but not limited to those which are shown in the dangerous goods list(s) in the applicable dangerous goods regulations for transport by road, rail, sea, air and/or inland waterways, or which are otherwise classified according to any of these regulations, including any materials, substance or article which might be reasonably believed to meet or have the potential to meet the criteria for such classification.
- (s) *Intellectual Property Rights*: patents; utility models; rights to inventions; copyright and neighbouring and related rights; moral rights; trademarks and service marks; trade names, logos, 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.
- (t) *Losses*: means all liabilities, claims, demands, damages, losses, taxes, charges, fines, penalties, losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation, wasted costs of labour and/or materials ordered), money judgments, costs, or expenses (including legal fees, calculated on a full indemnity basis, and any and all other reasonable investigative and/or other professional costs and expenses).
- (u) *Order*: the Customer's order for Services pursuant to clause 2.
- (v) *Products*: means any and all packaging materials and products which are supplied by CPS to the Customer as part of the Supply Services, as defined below.
- (w) *Services*: the services supplied by CPS to the Customer as set out in the Services Specification, which may include any or all of the following:
 - (i) *Carriage Services*: the actual carriage of Goods by road performed by CPS or their subcontractor;
 - (ii) *Design Services*: developing specifications, designs and prototypes for the packing of Goods, which may include the supply of Deliverables for use by the Customer strictly subject to these Conditions.
 - (iii) *Export Packing Services*: packing Goods prior to carriage by air, sea and/or road.
 - (iv) *Freight Forwarding Services*: arranging the carriage of Goods by air, sea and/or road, including any ancillary services.
 - (v) *Handling Services*: loading, unloading, lifting and/or handling of Goods.

- (vi) *Storage Services*: storage of Goods, including Handling Services where applicable.
- (vii) *Supply Services*: supplying Products for use either in Export Packing Services or by the Customer/a third party.
- (x) *Services Specification*: the description or specification of the Services agreed in writing by the parties.
- (y) *Standard Conditions*: means the standard trading conditions referred to in clause 9.4.
- (z) *TUPE*: means the Transfer of Undertakings (Protection of Employment) Regulations 2006, as amended.

1.2 Interpretation

- 1.1.1 A reference to legislation or a legislative provision is a reference to it as amended, extended or re-enacted from time to time, and shall include all subordinate legislation made from time to time under that legislation or legislative provision.
- 1.1.2 Any words following the terms including, include, in particular, for example or any similar expression, shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.1.3 A reference to writing or written includes email.

2 BASIS OF CONTRACT

2.1 A Contract is formed between CPS and the Customer when:

- 2.1.1 a Services Specification is drawn up and agreed between the parties based on the information and requirements supplied by the Customer, detailing the Services to be provided and providing a quotation for the applicable Charges; and
- 2.1.2 the Customer submits an Order to CPS, which shall constitute an offer to purchase Services in accordance with these Conditions; and
- 2.1.3 CPS issues written acceptance of the Order (or, if earlier, CPS begins to perform the Services), at which point and on which date the Contract shall come into existence ("*Commencement Date*").

2.2 These Conditions apply to each and every Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing. Any terms and conditions, confirmations or any other correspondence from the Customer that are in addition to, inconsistent with, or in conflict with the terms of this Contract (including for the avoidance of doubt any terms referenced or appearing on any Order) shall have no force or effect.

2.3 Any samples, drawings, descriptive matter or advertising issued by CPS, and any descriptions or illustrations contained in CPS's catalogues or brochures, are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Contract or have any contractual force unless expressly incorporated into the Services Specification.

2.4 If CPS issues a quotation prior to the formation of the Contract, this shall not constitute an offer, and shall only be valid for a period of twenty Business Days from its date of issue, unless otherwise expressly stated on the face of the quotation.

2.5 Any additional services provided by CPS to the Customer not detailed in the Services Specification shall be separately agreed in writing between the parties and subject to additional charges, but subject thereto shall be provided by CPS on the terms of this Contract.

3 SUPPLY OF SERVICES

3.1 CPS shall supply the Services to the Customer in accordance with the Services Specification in all material respects.

3.2 CPS shall use all reasonable endeavours to meet any performance dates indicated in the Services Specification, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.

3.3 CPS 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 CPS shall notify the Customer in any such event.

3.4 CPS warrants to the Customer that:

3.4.1 it has the right to enter into this Contract, and the execution, delivery and performance of this Contract will not conflict with, violate or breach any agreement to which CPS is a party;

3.4.2 it has the appropriate registrations, licenses and other governmental authorisations required to carry out its obligations under this Contract; and

3.4.3 the Services will be provided using reasonable care and skill.

3.5 Save as aforesaid, CPS makes no warranty or representation of any kind. All other express or implied terms, conditions and warranties (whether statutory or otherwise) on the part of CPS, are hereby excluded to the fullest extent permitted by law.

4 SERVICES SPECIFICATION

4.1 Pursuant to clause 2.1.1, CPS and the Customer shall agree a Services Specification detailing the Services to be provided and any special or bespoke terms and requirements agreed.

4.2 The Services Specification may be amended at any time prior to CPS issuing written acceptance of the Order pursuant to clause 2.1.3, provided that any such amendment (and both parties' agreement to it) is clearly documented in writing.

4.3 The Customer acknowledges and agrees that changes may not be made to the Services Specification after the Order has been accepted. If the Customer wishes to modify the Services Specification after the Order has been accepted, it must submit a request in writing to CPS to cancel the existing Order and pay any Charges incurred by CPS in fulfilling that existing Order, whereupon the parties shall be at liberty to recommence the process outlined in clause 2 above to create a new Order and Contract.

5 STANDARDS

5.1 CPS may, at its discretion, agree to abide by certain industry standards and/or customer specifications in the provision of the Service ("*Standards*") which may include (as applicable depending on the Goods and Services in scope) any or all of: BS1133; MPAS; JOSCAR; DEF CON 129: ISO9001; and ISO14001.

5.2 Any applicable Standards shall be expressly identified and set out in the Services Specification.

5.3 Any standard or specification which is not included in the Services Specification shall not be applicable to the provision of the Services.

6 CUSTOMER'S OBLIGATIONS

6.1 The Customer shall, and warrants that it shall:

- 6.1.1 ensure that any information it provides in or for the purposes of the Services Specification and the provision of the Services, including but not limited to: details about the contents, number, weight, dimensions and nature of all Goods (including regarding any Hazardous Goods pursuant to clause 7, and/or any other aspect or feature of the Goods which may not constitute Hazardous Goods but may become Hazardous Goods and/or otherwise cause loss, damage or injury in certain circumstances or conditions); consignee and shipping information; access to data interfaces, IT systems, and any other Customer procedures, processes or documentation; are complete and accurate and remain so at all times, and are provided to CPS before acceptance of the Order pursuant to clause 2.1.3 (and without prejudice to the other provisions of these Conditions, the Customer expressly agrees that it shall be liable for any loss or damage, including personal injury and any loss or damage to Goods or to CPS or third party goods and/or property, caused by or otherwise arising from its failure to comply with this clause);
- 6.1.2 co-operate with CPS in all matters relating to the Services;
- 6.1.3 without prejudice to clause 6.1.1, provide CPS in a timely manner with all such assistance, documents, information, items and materials as CPS may reasonably require in order to supply the Services;
- 6.1.4 obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start;
- 6.1.5 comply with all third-party requirements in connection with the Goods and the provision of the Services, including the requirements of any governmental body or authority and/or any third-party carrier; and
- 6.1.6 comply with any additional obligations as set out in these Conditions or the Services Specification.

6.2 The Customer further warrants to CPS that:

- 6.2.1 it is the owner of the Goods, and/or it is duly authorised by the owner of the Goods, and it has full capacity and authority to enter into and be bound by this Contract;
- 6.2.2 it has the right to enter into this Contract and the execution, delivery and performance of this Contract will not conflict with, violate or breach any other agreement;
- 6.2.3 it has the appropriate registrations, licenses and other governmental authorisations required to carry out its obligations under this Contract; and
- 6.2.4 the Order is placed by a duly authorised representative of the Customer.

6.3 Without prejudice to the foregoing, the Customer acknowledges that the provision of the Freight Forwarding Services is dependent upon the complete, accurate and timely submission of information and documents required by CPS in respect thereof, and that CPS will rely on this information and documentation in providing the Services, including but not limited for the purposes of transit documentation, SOLAS declarations, and for other purposes directly or indirectly related to the provision of the Services. Accordingly, the Customer further warrants that:

- 6.3.1 it has supplied to CPS all material information and documentation relating to its requirements and the Services, and that such information and documentation is up to date, complete and accurate;

- 6.3.2 it will ensure on an ongoing basis that such information is kept up to date, complete and accurate at all times; and
 - 6.3.3 it will immediately supply complete and accurate information and/or documentation which CPS may request for submission to any carrier and/or customs authority and/or other authority.
- 6.4 If CPS's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation ("*Customer Default*"):
- 6.4.1 without limiting or affecting any other right or remedy available to it, CPS 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 CPS's performance of any of its obligations;
 - 6.4.2 CPS shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from CPS's failure or delay to perform any of its obligations as set out in this clause; and
 - 6.4.3 without prejudice to CPS's rights under clause 10, the Customer shall reimburse CPS on written demand for any costs or losses sustained or incurred by CPS arising directly or indirectly from the Customer Default.

7 HAZARDOUS GOODS

- 7.1 Unless expressly agreed in advance by CPS in writing, in no circumstances shall the Customer instruct or require CPS to perform any Services in relation to Hazardous Goods, whether the nature of such Goods is known or unknown to the Customer. The Customer expressly acknowledges and agrees that it has sole responsibility for identifying any Hazardous Goods and seeking CPS's express prior consent to provide any Services in respect thereof.
- 7.2 Where CPS agrees to perform Services in respect of Hazardous Goods, the Customer warrants and undertakes to:
- 7.2.1 ensure that CPS has received precise and correct identification in all material respects of the Hazardous Goods in advance;
 - 7.2.2 ensure that all Hazardous Goods are presented, packaged, secured and labelled in strict accordance with statutory requirements from time to time; and
 - 7.2.3 comply with all applicable legislation and guidelines.
- 7.3 CPS reserves the right to:
- 7.3.1 impose additional special conditions in relation to any Goods which, in CPS's reasonable opinion, are or are likely to be or to become Hazardous Goods; and/or
 - 7.3.2 without liability, and at the Customer's expense, arrange for the destruction or disposal of any Goods which, in CPS's reasonable opinion, are or are likely to be or to become Hazardous Goods (but, save in cases of emergency, CPS shall not exercise this right without first providing the Customer with a reasonable opportunity to inspect and/or remove the Goods itself).

8 PREMISES

- 8.1 Where Services are performed at CPS Premises, the Customer:

- 8.1.1 shall only attend the Premises with CPS's consent, during Business Hours, and upon giving CPS reasonable prior written notice;
- 8.1.2 shall only attend the Premises for the purposes of and delivering, inspecting and/or removing the Goods (subject always to clause 15.8).
- 8.1.3 shall ensure that when visiting CPS Premises its employees, agents and representatives shall:
 - a) co-operate as far as may be reasonably necessary with CPS and its employees;
 - b) act in such a way as to avoid causing unreasonable disruption to CPS's routine and procedures;
 - c) comply with all rules and instructions issued from time to time by CPS relating to health and safety, and to the use and security of the CPS Premises.
- 8.2 Where Services are performed at Customer Premises, the Customer shall:
 - 8.2.1 provide CPS, its employees, agents, consultants and subcontractors, with access to the Customer Premises, office accommodation and other facilities as reasonably required by CPS;
 - 8.2.2 prepare the Customer Premises for the provision of the Services;
 - 8.2.3 provide access to all necessary lifting equipment (such as but not limited to cranes, forklift trucks, chains and/or slings) and ensure that such lifting equipment is in full working order; that all necessary safety checks have been fully and correctly carried out prior to use on such lifting equipment; and that the lifting equipment will be available for the duration of the performance of the Services;
 - 8.2.4 in addition to the specific requirements under clause 8.2.3, ensure that all requisite health and safety checks are correctly and fully carried out, and that all personnel receive all requisite and correct health and safety inductions, before provision of the Services commences;
 - 8.2.5 provide sufficient space for the provision of the Services;
 - 8.2.6 keep all CPS Materials held at the Customer's premises in safe custody at its own risk, maintained in good condition until returned to CPS, and not dispose of or use CPS Materials other than in accordance with CPS's written instructions or authorisation.

9 RISK, LIABILITY AND INSURANCE

THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE.

- 9.1 This clause 9 should be read in conjunction with clause 10 (Indemnity), 11 (Limitation of Liability) and 12 (Notification of claims and time limits for bringing suit).
- 9.2 The Customer expressly acknowledges and agrees that:
 - 9.2.1 pursuant to clause 9.5, CPS does not insure the Goods, whereas it is the responsibility of the Customer to insure the Goods against risk of loss and damage during the performance of the Services;
 - 9.2.2 pursuant to clause 9.5, CPS has insurance cover in respect of its own legal liability as limited and/or excluded under these Conditions, being unable to obtain insurance on a full responsibility basis at a commercially viable price;

- 9.2.3 as a result, CPS is required to limit and exclude its liability pursuant to these Conditions to reflect the insurance cover that it has been able to arrange, and the Charges have been determined on the basis that risk will be allocated and liability will be determined in accordance with the provisions of these Conditions; and
- 9.2.4 the Conditions are in the circumstances reasonable
- 9.3 Subject always to the provisions of clauses 10 and 11:
- 9.3.1 During the provision of Carriage Services, CPS shall only have risk in the Goods from the point at which transit commences to the point at which transit ends as defined in clause 7 of RHA Conditions.
- 9.3.2 CPS does not assume any risk in the Goods during the provision of Freight Forwarding Services, Design Services and/or Supply Services, but does assume responsibility for the performance of such Services in accordance with clause 3.4.3.
- 9.3.3 In relation to Supply Services, risk in Products supplied by CPS to the Customer passes once the Products are delivered pursuant to clause 14.1 below. Title in the Products only passes once payment for the Products has been received in full by CPS from the Customer pursuant to clause 15.
- 9.3.4 During the provision of Export Packing Services, Handling Services and/or Storage Services, CPS shall have risk in and liability for the Goods from the point at which the Goods are delivered into the custody of CPS until the point at which the Goods are placed into the custody of the Customer or any authorised third party (including any Carrier), or until the point at which the Services have been completed, whichever is the earlier.
- 9.3.5 CPS shall have no responsibility whatsoever for any loss or damage to Goods during storage in respect of any Export Packing Services or Handling Services which are not provided on CPS Premises.
- 9.3.6 Customer Materials are provided by the Customer at its sole risk. In no circumstances shall CPS be liable for any loss of or damage to Customer Materials whether or not in its possession and irrespective of the Services being performed.
- 9.4 Without prejudice to the generality of clause 10, the following standard trading conditions ("**Standard Conditions**") shall also apply to the provision of the following Services (in addition to these Conditions):
- 9.4.1 for the provision of Carriage Services, the latest edition of the Road Haulage Association (RHA) Conditions of Carriage;
- 9.4.2 for the provision of Freight Forwarding Services, the latest edition of the British International Freight Association (BIFA) Standard Trading Conditions;
- 9.4.3 for the provision of Export Packing Services, Handling Services and/or Storage Services, the latest edition of the United Kingdom Warehousing Association (UKWA) Conditions of Contract;
- and CPS shall be entitled to rely on every right, remedy, defence, time limit, limitation and/or exclusion of liability set out therein.
- 9.5 In relation to insurance:
- 9.5.1 The Customer shall at all times be responsible for insuring the Goods.

- 9.5.2 During the term of the Contract, and for a period of five (5) years after its termination or expiration for any reason, each party shall maintain, at its own cost, full and sufficient public liability insurance, products and/or professional liability insurance, employer's liability insurance and such other types of insurance as are customary for persons and entities in this line of business, with sufficient coverage for its actual and potential liabilities hereunder, and shall provide to the other party a certificate of such insurance (or equivalent) upon written request.

10 INDEMNITY

THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE.

- 10.1 The Customer shall indemnify, defend and hold harmless CPS on demand from and against any and all Losses suffered or incurred by CPS arising out of or in connection with or relating to:
- 10.1.1 any breach by the Customer of the Customer warranties and obligations in clause 6;
 - 10.1.2 without prejudice to the generality of clause 10.1.1, any failure by the Customer to provide timely, accurate and complete information pursuant to clause 6.1.1,
 - 10.1.3 any breach by the Customer of clause 7;
 - 10.1.4 the inclusion of any requirements in the Services Specification which are contrary to CPS's advice and/or recommendations (and CPS reserves the right to expressly identify such requirements accordingly);
 - 10.1.5 any exercise by CPS of its lien or right to suspend the Services pursuant to clause 15;
 - 10.1.6 any breach of clause 18.4, and/or any other use of the Deliverables other than in connection with the Services;
 - 10.1.7 the matters covered in clause 21;
 - 10.1.8 any claim howsoever caused or arising made by any other third party (including without limitation carriers, government agencies and regulatory bodies, companies and/or private individuals) against CPS under or in connection with the Goods and/or the provision of the Services;
 - 10.1.9 any loss of or damage to CPS Materials, or other goods or property (including third party goods or property), or death or personal injury, caused by or arising out of or in connection with the storage, handling or carriage of any Goods, whether or not such Goods are waste or Hazardous Goods, or in connection with the performance of the Services at the Customer Premises;
 - 10.1.10 the Customer's failure to comply with any statutory or HMRC requirements (or the requirements of any equivalent body or authority), including administrative requirements, concerning the payment of tax, customs or duties in respect of any of the Goods; and
 - 10.1.11 the cancellation of any Order by the Customer after a Contract has been formed in accordance with clause 2.
- 10.2 If any third party makes a claim, or notifies an intention to make a claim, against CPS which may reasonably be considered likely to give rise to a liability under this indemnity ("*Claim*"), upon receiving notice in writing from CPS specifying the nature of the Claim in reasonable detail, the Customer agrees that CPS may, at its sole discretion:

- 10.2.1 avoid, dispute, compromise or defend the Claim, or
 - 10.2.2 give the Customer authority to avoid, dispute, compromise or defend the Claim at its own expense.
- 10.3 The provisions of this clause 10 shall continue in force after termination or expiry of this Contract.

11 LIMITATION OF LIABILITY

THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE.

- 11.1 References to liability in this clause 11 include every kind of liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 11.2 Nothing in this clause 11 shall limit the Customer's payment obligations under the Contract.
- 11.3 Nothing in the Contract limits any liability which cannot legally be limited, including liability for:
- 11.3.1 death or personal injury caused by negligence;
 - 11.3.2 fraud or fraudulent misrepresentation; and
 - 11.3.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).
- 11.4 Subject to clause 11.3, CPS's total liability to the Customer shall in no circumstances exceed:
- 11.4.1 for Carriage Services, the sum of £1,300 per tonne of the affected Goods;
 - 11.4.2 for Freight Forwarding Services, the sum of 2 Special Drawing Rights per kilogram of the affected Goods;
 - 11.4.3 for Export Packing Services, Handling Services, Handling Services and/or Storage Services, the sum of £100 per tonne of the affected Goods;
 - 11.4.4 in all cases; the sum of 75,000 Special Drawing Rights in the aggregate
- 11.5 In no circumstances shall CPS have any liability whatsoever for any loss or damage arising from or in connection with:
- 11.5.1 save where and to the extent that Carriage Services are provided, the carriage of the Goods, including but not limited to any claims for loss or damage to Goods, and claims by any carrier including for any demurrage charges, cancellation charges, port charges or any other charges or penalties arising in connection with the carriage of the Goods, and for the avoidance of doubt all such costs/liabilities shall be for the Customer's account;
 - 11.5.2 any of the matters covered by clause 10.1;
 - 11.5.3 loss of or damage to any Customer Materials;
 - 11.5.4 delay of any kind; or
 - 11.5.5 any act, omission, or by the Customer or any third party engaged by the Customer or on behalf of the Customer.

- 11.6 Subject to clause 11.3, and without prejudice to clause 11.5, in no event shall CPS be liable to the Customer for: loss of profit; loss of reputation; loss of business, sales, or revenue; loss of agreements or contracts; loss of goodwill; loss of anticipated savings; loss of use or corruption of or damage to software, data or information; wasted expenditure; or for any consequential or indirect loss.
- 11.7 CPS has given commitments as to compliance of the Services with relevant specifications in clauses 3 and 6. In view of these commitments, the terms implied by sections 3-5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.
- 11.8 This clause 11 shall survive termination of the Contract.

12 NOTIFICATION OF CLAIMS AND TIME LIMITS FOR BRINGING SUIT

THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE.

- 12.1 The Customer's attention is drawn to the provisions of the Standard Conditions which provide time limits for notifying claims and bringing suit.
- 12.2 Without prejudice to the foregoing, the Customer agrees that CPS shall be discharged of all liability whatsoever and howsoever arising unless:
- 12.2.1 the Customer notifies CPS of any potential claim against CPS within two Business Days of discovery of the event or occurrence alleged by the Customer to give rise thereto; and
- 12.2.2 suit be brought, and written notice thereof given to CPS by the Customer, within nine months from the date of the event or occurrence alleged by the Customer to give rise to a cause of action against CPS.
- 12.3 In the event of a conflict between the provisions of clause 12.2 and any clause of any of the Standard Conditions providing for a longer period for the bringing of suit, the provisions of clause 12.2 shall prevail.

13 FORCE MAJEURE

- 13.1 "*Force Majeure Event*" means any circumstance not within CPS's reasonable control including, without limitation:
- 13.1.1 acts of God, flood, drought, earthquake or other natural disaster;
- 13.1.2 epidemic or pandemic;
- 13.1.3 terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;
- 13.1.4 nuclear, chemical or biological contamination or sonic boom;
- 13.1.5 any law or any action taken by a government or public authority, including imposing an export or import restriction, embargo quota or prohibition, or failing to grant a necessary licence or consent;
- 13.1.6 collapse of buildings, fire, flood, explosion or accident;
- 13.1.7 any labour or trade dispute, strikes, industrial action or lockouts (other than in each case by the party seeking to rely on this clause, or companies in the same group as that party);

13.1.8 non-performance by carriers, suppliers or subcontractors; and

13.1.9 any other matter beyond CPS's reasonable control.

13.2 If CPS is prevented, hindered or delayed in or from performing any of its obligations under this Contract by a Force Majeure Event, it shall not be in breach of this Contract or otherwise liable for any such failure or delay in the performance of its obligations. The time for performance of such obligations shall be extended accordingly.

14 SPECIAL PROVISIONS RELATING TO STORAGE

14.1 Supply Services

14.1.1 This clause applies when i) CPS has been engaged to provide Supply Services and ii) the Products are to be delivered to the Customer once available rather than used by CPS in Export Packing Services.

14.1.2 Delivery shall take place at the CPS Premises specified by CPS. CPS will notify the Customer once the Products are completed and available for collection.

14.1.3 Products must be collected from CPS within 10 Business Days of the date of such notification. Delivery occurs, and risk in the Products passes to the Customer, at the point at which the Customer takes possession of the Products or upon expiry of this timescale, whichever is the earlier.

14.1.4 If the Customer fails to collect the Products within the above timescale, CPS shall continue to store the Products at the Customer's sole risk and expense, and CPS shall have the right to charge the Customer storage for the Products at its current rate until such time as the Customer collects the Products. The Customer shall pay such charges in accordance with these Conditions.

14.1.5 In addition, if the Customer fails to collect the Products within the above timescale, CPS may at its sole discretion, and without prejudice to its other rights and remedies (including under clause 14.1.4 and clause 15.8), give notice in writing to the Customer of its intention to sell or otherwise dispose of some or all of the Products in its possession if the Products are not collected within a further twenty Business Days. If the Products are not collected by the expiry of such period, CPS may without liability sell or otherwise dispose of some or all of the Products in its possession, as agent of the Customer and at the Customer's expense and risk, and shall remit the proceeds of sale or disposal of such Goods to the Customer after deduction of all amounts due to CPS and the expenses incurred by CPS for the sale or disposal of the Goods. CPS shall not be liable for the price obtained for the sale or disposal of the Goods.

14.2 Delays

14.2.1 CPS accepts no liability for delays of any sort, including (but not limited to) delays in collections, deliveries (including of any goods or materials from any third party required for the performance of the Services), and/or transportation in general, whether or not forming part of the Freight Forwarding Services, and delays from or caused by any other service provider.

14.2.2 In the event that Goods arrive at CPS Premises outside CPS's normal hours, CPS reserves the right to either:

- a) require the delivering haulier to defer the delivery until the next Business Day and to hold the Goods until the delivery is duly effected, at the Customer's risk and expense; or

- b) keep the Premises open late to accept the delivery, and pass any and all additional charges onto the Customer, which the Customer shall pay in accordance with clause 15.

14.3 Removal of Goods from CPS Premises

- 14.3.1 This clause applies to Goods held at CPS Premises, whether in the context of Export Packing Services or Storage Services.
- 14.3.2 CPS may at any time require the Customer (at its own expense) to remove part or all of the Goods from the CPS Premises. The Customer shall fully comply with any such requirement within a maximum of five Business Days.
- 14.3.3 The Customer must provide CPS with at least four weeks' notice in writing of its intention to vacate any storage area, and shall continue to be liable for the relevant storage Charges during this notice period whether or not any or all of the relevant Goods are removed by the Customer prior to expiry of the notice period.

14.4 Free storage time

- 14.4.1 CPS may, at its discretion, include the provision of free storage time after the provision of Export Packing Services when the relevant Goods are to be stored after such Services are provided.
- 14.4.2 Any such free storage time will be four weeks from the date of packing unless otherwise stated in the Services Specification.
- 14.4.3 Storage of the Goods, whether before, after or unconnected with any Export Packing Services, shall at all times deem to be Storage Services for the purposes of these Conditions.
- 14.4.4 The Customer shall be liable to pay Charges for all Storage Services save where the free storage time period applies.

15 CHARGES AND PAYMENT

- 15.1 In consideration of the provision of the Services by CPS, the Customer shall pay the Charges in GBP as set out in the Services Specification. For the purposes of any exchange rate calculation, the exchange rate to be used shall be the prevailing rate as at the date on which the Order was placed by the Customer.
- 15.2 The Customer acknowledges and agrees that:
 - 15.2.1 the Charges may be based on third party costs and rates and are subject to fluctuation and various external factors;
 - 15.2.2 accordingly, CPS may amend and/or requote for the Charges on a [quarterly/bi-annual] basis or whenever there is change in circumstances affecting the costs of the Services; and
 - 15.2.3 interim reviews may also take place at any time by mutual agreement between the parties.
- 15.3 CPS shall invoice the Customer for the Charges either upon completion, or periodically in advance or in arrears, as appropriate to the Services being provided. Where CPS agrees to invoice upon completion, the Customer acknowledges and agrees that they remain liable to pay for any additional Services (such as but not limited to Storage Services) which may be provided after the invoice for the original Services has been raised and/or paid.

- 15.4 The Customer shall pay each invoice submitted by CPS in full and in cleared funds, without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law), within 30 days of the date of the invoice or, if different, in accordance with any credit terms agreed by CPS and confirmed in writing to the Customer (which shall prevail over this clause 15.4 in the event of a conflict). In all cases, time for payment shall be of the essence of the Contract.
- 15.5 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (VAT). Where any taxable supply for VAT purposes is made under the Contract by CPS to the Customer, the Customer shall, on receipt of a valid VAT invoice from CPS, pay to CPS such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.
- 15.6 If the Customer fails to make a payment due to CPS under the Contract by the due date, then, without prejudice to any other right or remedy which CPS may have:
- 15.6.1 the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%;
- 15.6.2 CPS may, without incurring any liability under this Contract, withdraw any agreed credit terms until further notice.
- 15.7 Without prejudice to any other rights and remedies which CPS may have, CPS shall be entitled to suspend the provision of Services in full or in part in case of any: (i) delay in payment of any invoice, when due; or (ii) overdue invoices exceeding the credit limit agreed; or (iii) change in credit insurance terms by its insurer, each immediately upon notice served to the Customer (such notice to include email). This suspension shall result in an equivalent extension of any performance deadlines applicable to the Services. The Customer shall assume full liability for such suspension and indemnify CPS in respect of all liabilities arising in connection with the suspension.
- 15.8 Without prejudice to any other rights and/or remedies it may have, CPS shall have a general and particular lien on the Goods in its possession as security for payment of all sums claimed by CPS from the Customer. The Charges shall continue to accrue on any Goods detained under lien. If an invoice for the Charges is not paid in full on its due date for payment, CPS, without prejudice to its other rights and remedies, give notice in writing to the Customer of its intention to sell or otherwise dispose of some or all of the Goods in its possession if the amount outstanding is not paid in full within fourteen days. If the amount due is not paid by the expiry of such period, CPS may sell or otherwise dispose of some or all of the Goods in its possession, as agent of the Customer and at the Customer's expense and risk, and shall remit the proceeds of sale or disposal of such Goods to the Customer after deduction of all amounts due to CPS and the expenses incurred by CPS for the sale or disposal of the Goods. CPS shall not be liable for the price obtained for the sale or disposal of the Goods.
- 15.9 Where the Goods are liable to perish or deteriorate, CPS's right to sell or otherwise dispose of such Goods under clause 15.8 shall arise immediately upon any sum becoming due and unpaid subject only to CPS taking all reasonable steps to notify the Customer of its intention to sell or otherwise dispose of the Goods before doing so.

16 DATA PROTECTION

The Customer and CPS shall both comply with their respective obligations under all applicable data protection legislation and shall not intentionally do or omit to do anything which would cause the other to breach such data protection legislation.

17 ETHICS

17.1 The Customer and CPS shall both:

- 17.1.1 comply with all applicable laws including laws relating to anti-bribery, anti-slavery, anti-facilitation of tax evasion, including the Bribery Act 2010, the Modern Slavery Act 2015 and the Criminal Finances Act 2017 ("*Relevant Requirements*");
- 17.1.2 not engage in any activity, practice or conduct which constitutes an offence under the Bribery Act 2010 or the Modern Slavery Act 2015 (or would do so if such activity, practice or conduct had been carried out in the United Kingdom);
- 17.1.3 have and maintain in place throughout the term of the Contract its own policies and procedures, including adequate procedures under the Bribery Act 2010 to ensure compliance with the Relevant Requirements and will enforce them where appropriate;
- 17.1.4 promptly report to the other party any request or demand for any undue financial or other advantage of any kind or any request to facilitate the evasion of tax received by it in connection with the performance of the Services or its obligations under this Contract; and
- 17.1.5 upon reasonable request by the other party (but not more than once per annum), certify to that other party in writing that it complies with this clause 17 and provide such supporting evidence of compliance as reasonably required.

18 INTELLECTUAL PROPERTY RIGHTS

- 18.1 All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any Goods) shall be owned by CPS.
- 18.2 Without prejudice to the generality of foregoing, all Intellectual Property Rights in any Deliverables generated by CPS in the performance of Design Services shall at all times be owned by CPS.
- 18.3 Subject to clause 18.4, CPS grants to the Customer, or shall procure the direct grant to the Customer of, a fully paid-up, worldwide, non-exclusive, royalty-free licence during the term of the Contract to copy and modify the Deliverables for the purpose of receiving and using the Services and the Deliverables in its business.
- 18.4 The Customer shall not:
 - 18.4.1 sub-license, assign or otherwise transfer the rights granted in clause 18.3;
 - 18.4.2 disclose or use the Deliverables for the purposes of procuring the Services from any other party or use the Deliverables itself other than for the purposes of procuring the Services from CPS.
- 18.5 The Customer grants CPS a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify any materials provided by the Customer to CPS for the term of the Contract for the purpose of providing the Services to the Customer.

19 TERMINATION

- 19.1 Without affecting any other right or remedy available to it, either party may terminate the Contract by giving the other party one month's written notice, unless otherwise stated in the Services Specification.

- 19.2 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:
- 19.2.1 the other party commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within fourteen days of that party being notified in writing to do so;
 - 19.2.2 the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), applying to court for or obtaining a moratorium under Part A1 of the Insolvency Act 1986, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
 - 19.2.3 the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
 - 19.2.4 the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- 19.3 Without affecting any other right or remedy available to it, CPS may terminate the Contract with immediate effect by giving written notice to the Customer if:
- 19.3.1 the Customer fails to pay any amount due under the Contract on the due date for payment; or
 - 19.3.2 there is a change of Control of the Customer.
- 19.4 Without affecting any other right or remedy available to it, CPS may suspend the supply of Services to the Customer if:
- 19.4.1 the Customer fails to pay any amount due under the Contract on the due date for payment; or
 - 19.4.2 the Customer becomes subject to any of the events listed in clauses 19.2.2 - 19.2.4 inclusive, or CPS reasonably believes that the Customer is about to become subject to any of them.

20 CONSEQUENCES OF TERMINATION

- 20.1 On termination or expiry of the Contract:
- 20.1.1 the Customer shall immediately pay to CPS all of CPS's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, CPS shall submit an invoice, which shall be payable by the Customer immediately on receipt;
 - 20.1.2 if CPS has any work in progress as at the date of termination or expiry, CPS shall, at its discretion, be entitled to complete such work in progress, and the Customer shall pay the relevant Charges for such work in progress in accordance with these Conditions; and
 - 20.1.3 the Customer shall return all of CPS Materials, Confidential Information, and any Deliverables, including any copies thereof. If the Customer fails to do so, then CPS may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract.

20.2 Termination or expiry of the Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

20.3 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.

21 **TUPE**

21.1 The parties agree that they do not regard this Contract or the commencement of the Services as constituting a "relevant transfer" for the purposes of TUPE. Accordingly, if a contract of employment between the Customer (or any other person previously engaged in providing to the Customer like services as those contemplated in whole or part by this Contract) and any person has effect as if originally made between CPS and such person as a result of TUPE, or if any claim is made to such effect, then:

21.1.1 CPS shall as soon as reasonably practicable, following its becoming aware of the same, notify the Customer (or such other person) who shall be afforded an opportunity to re-engage any such employee and consult with the Customer as to how such employee is to be dealt with;

21.1.2 notwithstanding clause 21.1.1 above, CPS may within three (3) months of becoming aware of the application of TUPE to any such employment contract terminate such contract; and

21.1.3 the Customer shall indemnify and keep CPS indemnified at all times from and against all claims, expenses and incidental costs (on a full indemnity basis) reasonably incurred by CPS in respect of the employment of and the termination of the employment of any such employee and in respect of any claim arising out of the actual or alleged application of TUPE to this Contract or the commencement of the Services.

21.2 In the event that there is an outward TUPE transfer (being a situation where CPS is a transferor for the purposes of the TUPE as a result of the transfer of operations carried out by CPS for the Customer to a replacement supplier or to the Customer), the Customer will indemnify CPS in full in accordance with clause 10 against all Losses which CPS may incur in connection with the Customer's and/or any replacement supplier's failure to comply with its legal obligations under TUPE.

22 **GENERAL**

22.1 **Assignment and other dealings**

22.1.1 CPS may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.

22.1.2 The Customer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of CPS.

22.2 **Subcontracting.** CPS shall be permitted to subcontract any or all of its obligations under this Contract at any time but shall remain liable for all acts and omissions of its subcontractors.

22.3 **Relationship of the parties**

22.3.1 Save as expressly set out in this Contract, nothing in this Contract is intended to, or shall be deemed to, establish any partnership between any of the parties, constitute

any party to this Contract the agent, fiduciary or employee of any other party to this Contract.

22.3.2 Save as required for the purposes of the Freight Forwarding Services, no party to this Contract will have any authority to impose any obligation to a third party on any other party to this Contract.

22.4 Confidentiality

22.4.1 Each party undertakes that it shall not at any time disclose to any person any Confidential Information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 22.4.2.

22.4.2 Each party may disclose the other party's confidential information:

a) to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's Confidential Information comply with this clause 22.4; and

b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

22.4.3 Neither party shall use the other party's Confidential Information for any purpose other than to perform its obligations under the Contract.

22.5 Entire agreement.

22.5.1 The 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.

22.5.2 Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.

22.5.3 Nothing in this clause shall limit or exclude any liability for fraud.

22.6 **Variation.** Except as set out in these Conditions, no variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

22.7 **Waiver.** A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

22.8 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this Contract. If any provision or part-provision of this Contract deleted under this clause, the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

22.9 Notices

22.9.1 Any notice given to a party under or in connection with the Contract shall be in writing and shall be 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); or sent by email to enquiries@conwaypack.co.uk or to such other address as is specified in the Services Specification.

22.9.2 Any notice shall be deemed to have been received:

- a) if delivered by hand, at the time the notice is left at the proper address;
- b) 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
- c) if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume (and "*business hours*" means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt).

22.9.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.

22.10 **Rights and remedies.** Unless expressly otherwise stated, the rights and remedies given to the parties in these Conditions are in addition to, without prejudice to, and not exclusive of, any and all other rights or remedies given to them whether by this Contract, the Conditions, by law or otherwise, and all such rights and remedies are cumulative.

22.11 Third party rights.

22.11.1 Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

22.11.2 The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.

22.12 **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.

22.13 **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 the Contract or its subject matter or formation.