

SCHENKER LTD AND SCHENKER IRELAND LTD

TERMS AND CONDITIONS FOR THE SUPPLY OF GOODS AND SERVICES

1. Interpretation

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

1.1 Definitions:

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

Business Hours: the period from 9.00 am to 5.00 pm on any Business Day.

Commencement Date: has the meaning given in clause 2.5.

Conditions: these terms and conditions as amended from time to time in accordance with clause 19.10(a).

Contract: the contract between the Customer and the Supplier for the supply of Goods and/or Services in accordance with these Conditions.

Control: has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression **change of Control** shall be interpreted accordingly.

Customer: Schenker Limited (Company Number 383914) whose registered office is at Schenker Ltd, Schenker House, Unit 3, LHR Portal, Scylla Road, London Heathrow Airport, Hounslow, TW6 3FE, UK and/or Schenker (Ireland) Limited (Company Number IE213397) whose registered office is at Smithstown, 607024, Ireland

Customer Materials: has the meaning set out in clause 6.3(i).

Deliverables: all documents, products and materials developed by the Supplier or its agents, contractors and employees as part of or in relation to the Services in any form or media, including drawings, maps, plans, diagrams, designs, pictures, computer programs, data, specifications and reports (including drafts).

Delivery Location: has the meaning given in clause 5.5(b).

Force Majeure Event : the occurrence of any event beyond the reasonable control of a Party to the Contract (excluding any strike, lockout or industrial action involving that Party's employees or any other failure in the Supplier's supply chain) which directly causes that Party to be unable to comply with all or a material part of its obligations under the Contract where that event does not arise from the act, omission or negligence of that Party.

Goods: the goods to be supplied by the Supplier (or any part of them) set out in the Order.

Goods Specification: any specification for the Goods, including any related plans and drawings, that is agreed in writing by the Customer and the Supplier.

Group: any Subsidiary, or Subsidiary Undertaking, or any entity under control directly or indirectly, or any Holding Company, for the time being, of any Party; or any ultimate Holding Company, for the time being within the Party's group or organisation; or any entity that controls directly or indirectly, for the time being, any Party; or any Subsidiary, Subsidiary Undertaking or any entity under control directly or indirectly, for the time being, of any Holding Company or any ultimate Holding Company within the Party's group or organisation for the time being.

Holding Company: has the meaning set out in Section 1159 of the Companies Act 2006.

Intellectual Property Rights: patents, utility models rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, 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.

Mandatory Policies: the Customer's business policies and codes in force from time to time a copy of which is available upon request and on our EProcure supplier homepage.

Order: the Customer's written instruction to supply the Goods and/or Services incorporating, and subject to, these terms and condition.

Services: the services, including any Deliverables, to be provided by the Supplier under the Contract as set out in the Service Specification.

Service Specification: the description or specification for Services agreed in writing by the Customer and the Supplier.

Subsidiary: has the meaning set out in Section 1159 of the Companies Act 2006.

Subsidiary Undertaking: has the meaning set out in Section 1162 of the Companies Act 2006.

Supplier: the person or firm from whom the Customer purchases the Goods and/or Services.

UK GDPR: has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.

1.2 Interpretation:

- (a) A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- (b) A reference to a party includes its personal representatives, successors and permitted assigns.
- (a) A reference to legislation or a legislative provision is a reference to it as amended or re-enacted. A reference to legislation or a legislative provision includes all subordinate legislation made under that legislation or legislative provision.
- (b) Any words following the terms **including, include, in particular, for example** or any similar expression shall be interpreted as illustrative and shall not limit the sense of the words preceding those terms.
- (c) A reference to **writing** or **written** excludes fax but not email.

2. Basis of contract

- 2.1 The Supplier will only provide Goods and/or Services to Customer pursuant to an Order. All Orders placed with the Supplier by Customer will be subject to these terms and conditions. Any terms and conditions included in or on the reverse of an Order shall have no legal effect. If the Customer has an existing signed active contract with the Supplier for the same Goods and/or Services then the existing contract shall apply and the Conditions shall not apply until such time as the existing contract comes to an end.

- 2.2 The Customer may cancel or change an Order without charge prior to delivery of Goods or commencement of performance of Services.
- 2.3 No terms or conditions endorsed upon, delivered with or contained in the Supplier's acknowledgement or acceptance of Order, or similar document (whether disclosed or exchanged before or after the date of an Order) shall form part of the Contract and the Supplier waives any right which it otherwise might have to rely on such terms and conditions.
- 2.4 The Order constitutes an offer by the Customer to purchase Goods and/or Services from the Supplier in accordance with the Conditions.
- 2.5 The Order shall be deemed to be accepted on the earlier of:
- (a) the Supplier issuing written acceptance of the Order; or
 - (b) any act by the Supplier consistent with fulfilling the Order,
- at which point and on which date the Contract shall come into existence
- 2.6 These Conditions apply to the Contract to the exclusion of any other terms that the Supplier seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.
- 2.7 All of these Conditions shall apply to the supply of both Goods and Services except where the application to one or the other is specified.
- 2.8 The Supplier waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Supplier that is inconsistent with these Conditions.

3. Conditions of Supply

- 3.1 The purchase of Goods and/or Services by Customer pursuant to a Contract shall, unless otherwise expressly agreed in an Order, be on a non-exclusive basis and the Supplier acknowledges that Customer may appoint any other person to provide goods and/or services the same as or similar to the Goods and/or Services provided pursuant to a Contract.
- 3.2 The Supplier acknowledges that Customer shall have no obligation to place Orders.
- 3.3 The Supplier acknowledges that the Goods and/or Services provided (including for the avoidance of doubt, any agreed pricing, pursuant to a Contract) may be for the benefit of other companies within Company's Group and that any such company may enforce the terms of a Contract subject to and in accordance with the Conditions and the provisions of the Contracts (Rights of Third Parties) Act 1999.
- 3.4 The Supplier will ensure that the Supplier's employees, sub-contractors and agents comply with all applicable staff, contractors' and other applicable regulations of Customer whilst on Customer's premises and with any such regulations imposed by any agent or contractor of Customer when on their premises (including, where applicable, Customer's Drugs and Alcohol Policy and any other policy concerning matters of health & safety).

4. Supply of Goods

4.1 The Supplier warrants that that when delivered the Goods shall:

- (a) correspond with their description and any applicable Goods Specification;
- (b) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and fit for any purpose held out by the Supplier or made known to the Supplier by the Customer, expressly or by implication, and in this respect the Customer relies on the Supplier's skill and judgement;
- (c) where they are manufactured products, be free from defects in design, materials and workmanship and remain so for 12 months after delivery;
- (d) comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods;
- (e) will be safe and will not cause death, injury, loss or damage when properly used; and
- (f) will be of the correct quantity as specified in the Goods Specification or the Order.

4.2 The Supplier shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract in respect of the Goods.

4.3 The Customer may inspect and test the Goods at any time before delivery. The Supplier shall remain fully responsible for the Goods despite any such inspection or testing and any such inspection or testing shall not reduce or otherwise affect the Supplier's obligations under the Contract. Where any sample of the Goods is supplied to and approved by Customer, the Goods will correspond to the approved sample.

4.4 If following such inspection or testing the Customer considers that the Goods do not comply or are unlikely to comply with the Supplier's undertakings at clause 4.1, the Customer shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance.

4.5 The Customer may conduct further inspections and tests after the Supplier has carried out its remedial actions.

4.6 The Supplier shall notify the Customer of changes to processes, products, or services, including changes of their external providers or location of manufacture which may affect the Goods to be provided under the Contract.

5. Delivery of Goods

5.1 In respect of Goods, proof of delivery will be established only through an official stamp of Customer and/or by the signature of an authorised employee of Customer on a delivery note clearly detailing the Goods and the quantity Delivered.

5.2 Any delivery note or other document accompanying a delivery which is signed or stamped by or on behalf of Customer is simply an acknowledgement of delivery and will not constitute an acceptance by Customer that the Goods comply with the Contract. Customer will not be considered to have accepted any Goods until after it has had a reasonable time to inspect the Goods or, if later, following a reasonable time after any latent defect in the Goods has become apparent.

5.3

5.4 The Supplier shall ensure that:

- (a) the Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition;
- (b) each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, the Order number (if any), the type and quantity of the Goods (including the code number of the Goods (where applicable)), special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and
- (c) it states clearly on the delivery note any requirement for the Customer to return any packaging material for the Goods to the Supplier. Any such packaging material shall only be returned to the Supplier at the cost of the Supplier.

5.5 The Supplier shall deliver the Goods:

- (a) on the date specified in the Order or, if no such date is specified, then within five days of the date of the Order;
- (b) to the Customer's premises or such other location as is set out in the Order or as instructed by the Customer before delivery (**Delivery Location**); and
- (c) during the Customer's normal hours of business on a Business Day, or as instructed by the Customer.

5.6 Delivery of the Goods shall be completed on the completion of unloading of the Goods at the Delivery Location.

5.7 Any rejected Goods shall be returnable at the Supplier's risk and expense. If the Supplier delivers more or less than the quantity of Goods ordered, and the Customer accepts the delivery, the Supplier shall make a pro rata adjustment to the invoice for the Goods.

5.8 The Supplier shall not deliver the Goods in instalments without the Customer's prior written consent. Where it is agreed that the Goods are delivered by instalments, they may be invoiced and paid for separately. However, failure by the Supplier to deliver any one instalment on time or at all or any defect in an instalment shall entitle the Customer to the remedies set out in clause 7.1.

5.9 Title and risk in the Goods shall pass to the Customer on completion of delivery.

6. Supply of Services

6.1 The Supplier shall from the date set out in the Order and for the duration of the Contract supply the Services to the Customer in accordance with the terms of the Order and the Conditions.

6.2 The Supplier shall meet any performance dates for the Services specified in the Order or that the Customer notifies to the Supplier and time is of the essence in relation to any of those performance dates.

6.3 In providing the Services, the Supplier shall:

- (a) co-operate with the Customer in all matters relating to the Services, and comply with all instructions of the Customer;
- (b) perform the Services with the best care, skill and diligence in accordance with best practice in the Supplier's industry, profession or trade;

- (c) use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with the Contract;
- (d) ensure that the Services will conform with all descriptions, standards and specifications set out in the Service Specification, and that the Deliverables shall be fit for any purpose that the Customer expressly or impliedly makes known to the Supplier;
- (e) provide all equipment, tools and vehicles and such other items as are required to provide the Services;
- (f) use the best quality goods, materials, standards and techniques, and ensure that the Deliverables, and all goods and materials supplied and used in the Services or transferred to the Customer, will be free from defects in workmanship, installation and design;
- (g) obtain and at all times maintain all licences and consents which may be required for the provision of the Services;
- (h) observe all health and safety rules and regulations and any other security requirements that apply at any of the Customer's premises;
- (i) hold all materials, equipment and tools, drawings, specifications and data supplied by the Customer to the Supplier (**Customer Materials**) in safe custody at its own risk, maintain the Customer Materials in good condition until returned to the Customer, and not dispose of or use the Customer Materials other than in accordance with the Customer's written instructions or authorisation;
- (j) not do or omit to do anything which may cause the Customer to lose any licence, authority, consent or permission upon which it relies for the purposes of conducting its business, and the Supplier acknowledges that the Customer may rely or act on the Services;
- (k) Where Customer has requested it, the Supplier will ensure that all of the Supplier's employees have been vetted and screened in such manner as Customer may reasonably require and, when requested, have signed a letter of confidentiality addressed to Customer;
- (l) Where the Supplier or the Supplier's staff have to enter Customer's premises to perform the Services (or any part of them), the Supplier will ensure that the Supplier's staff carry suitable identification with them which shall be produced to Customer's staff upon request. The Supplier must not enlist the services of any of Customer's employees to assist with any work carried out in the provision of Services at Customer's premises. The Supplier shall ensure that the Supplier's employees comply with Customer's local security arrangements and conditions including the right to search the Supplier's staff shall carry out their duties so as to cause minimum inconvenience and disruption to the operation of Customer's premises;
- (m) Notify the Customer of any changes to processes, products or services including use of sub-contractors that may impact upon the Services to be provided; and
- (n) comply with any additional obligations as set out in the Service Specification.

7. Customer remedies

7.1 If the Supplier fails to deliver the Goods by the applicable date or to perform the Services by the applicable date, or both, the Customer shall, without limiting or affecting other rights or remedies available to it, have any one or more of the following rights and remedies:

- (a) to terminate the Contract with immediate effect by giving written notice to the Supplier;

- (b) to refuse to accept any subsequent performance of the Services and/or delivery of the Goods which the Supplier attempts to make;
- (c) to recover from the Supplier any costs incurred by the Customer in obtaining substitute goods and/or services from a third party;
- (d) to require a refund from the Supplier of sums paid in advance for Services that the Supplier has not provided and/or Goods that it has not delivered; and
- (e) to claim damages for any additional costs, loss or expenses incurred by the Customer which are in any way attributable to the Supplier's failure to meet such dates.

7.2 If the Supplier has delivered Goods that do not comply with the undertakings set out in clause 4.1, then, without limiting or affecting other rights or remedies available to it, the Customer shall have one or more of the following rights and remedies, whether or not it has accepted the Goods:

- (a) to terminate the Contract with immediate effect by giving written notice to the Supplier;
- (b) to reject the Goods (in whole or in part) whether or not title has passed and to return them to the Supplier at the Supplier's own risk and expense;
- (c) to require the Supplier to repair or replace the rejected Goods, or to provide a full refund of the price of the rejected Goods (if paid);
- (d) to refuse to accept any subsequent delivery of the Goods which the Supplier attempts to make;
- (e) to recover from the Supplier any expenditure incurred by the Customer in obtaining substitute goods from a third party; and
- (f) to claim damages for any additional costs, loss or expenses incurred by the Customer arising from the Supplier's failure to supply Goods in accordance with clause 4.1.

7.3 If the Supplier has supplied Services that do not comply with the requirements of clause 6.3(d) then, without limiting or affecting other rights or remedies available to it, the Customer shall have one or more of the following rights and remedies:

- (a) to terminate the Contract with immediate effect by giving written notice to the Supplier;
- (b) to return the Deliverables to the Supplier at the Supplier's own risk and expense;
- (c) to require the Supplier to provide repeat performance of the Services, or to provide a full refund of the price paid for the Services (if paid);
- (d) to refuse to accept any subsequent performance of the Services which the Supplier attempts to make;
- (e) to recover from the Supplier any expenditure incurred by the Customer in obtaining substitute services or deliverables from a third party; and
- (f) to claim damages for any additional costs, loss or expenses incurred by the Customer arising from the Supplier's failure to comply with clause 6.3(d).

7.4 These Conditions shall extend to any substituted or remedial services and/or repaired or replacement goods supplied by the Supplier.

7.5 Without prejudice to any other rights or remedies of Customer if within 12 months of the performance of the Services or, if longer, within any period specified in the Order it is discovered that the Services do not comply with the requirements of the Contract then Customer shall have the right to require the Supplier, free of charge and within 30 days, to re-perform the Services in compliance with the requirements of these Conditions.

7.6 The Customer's rights and remedies under the Contract are in addition to, and not exclusive of, any rights and remedies implied by statute and common law.

8. Customer's obligations

8.1 The Customer shall:

- (a) provide the Supplier with reasonable access at reasonable times to the Customer's premises for the purpose of providing the Services; and
- (b) provide such necessary information for the provision of the Services as the Supplier may reasonably request.

9. Charges and payment

9.1 The price for the Goods:

- (a) shall be the price set out in the Order, or if no price is quoted, the price set out in the Supplier's published price list in force at the Commencement Date; and
- (b) shall be inclusive of the costs of packaging, insurance and carriage of the Goods. No extra charges shall be effective unless agreed in writing and signed by the Customer.

9.2 The charges for the Services shall be set out in the Order, and shall be the full and exclusive remuneration of the Supplier in respect of the performance of the Services. Unless otherwise agreed in writing by the Customer, the charges shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services.

9.3 In respect of the Goods, the Supplier shall invoice the Customer on or at any time after completion of delivery. In respect of Services, the Supplier shall invoice the Customer on completion of the Services. Each invoice shall include such supporting information required by the Customer to verify the accuracy of the invoice, including the relevant purchase order number.

9.4 In consideration of the supply of Goods and/or Services by the Supplier, the Customer shall pay the invoiced amounts within 45 days (UK) and within 30 days (IE) of the date of a correctly rendered invoice to a bank account nominated in writing by the Supplier.

9.5 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of valued added tax chargeable from time to time (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Goods and/or Services at the same time as payment is due for the supply of the Goods and/or Services.

- 9.6 If a party fails to make any payment due to the other party under the Contract by the due date for payment, then the defaulting party 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 date at 2% a year above the Bank of England's base rate from time to time, but at 2% a year for any period when the base rate is below 0%. Where a payment is disputed in good faith, interest is only payable after the dispute is resolved, on sums found or agreed to be due, from five days after the dispute is resolved until payment.
- 9.7 The Supplier shall maintain complete and accurate records of the time spent and materials used by the Supplier in providing the Services, and the Supplier shall allow the Customer to inspect such records at all reasonable times on request.
- 9.8 Customer will be entitled at its sole discretion to set off any liability of Customer (and/or any company in the same Group as Customer) to the Supplier against any liability of the Supplier to Customer (and/or any company in the same Group as Customer) (in either case however such liability arises and whether or not it is present or future, liquidated or unliquidated and irrespective of the currency of its denomination). Any exercise by Customer of its rights under this Clause does not affect any other rights and remedies it may have under this Agreement or otherwise. Customer will provide to the Supplier written notice of any exercise of its right of set off under this Clause which involves any company in the same Group as Customer. Customer will procure the acceptance by the relevant company in the same Group as Customer of any set off under this Clause involving a company in the same Group as Customer. The Supplier will accept any such set off in relation to a liability owed to the Supplier by a company in the same Group as Customer in full and final discharge of such liability

10. Intellectual property rights

- 10.1 All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any Customer Materials) shall be owned by the Supplier.
- 10.2 The Supplier grants to the Customer, or shall procure the direct grant to the Customer of, a fully paid-up, worldwide, non-exclusive, royalty-free perpetual and irrevocable licence to copy and modify the Deliverables (excluding Customer Materials) for the purpose of receiving and using the Services and the Deliverables.
- 10.3 The Supplier acknowledges that all rights in the Customer Materials are and shall remain the exclusive property of the Customer.

11. Indemnity

- 11.1 The Supplier shall indemnify the Customer 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 costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the Customer arising out of or in connection with:
- (a) any claim made against the Customer for actual or alleged infringement of a third party's intellectual property rights arising out of, or in connection with, the manufacture, supply or use of the Goods, or receipt, use or supply of the Services (excluding the Customer Materials);
 - (b) any claim made against the Customer by a third party for death, personal injury or damage to property arising out of, or in connection with, defects in the Goods, as delivered, or the Deliverables;

- (c) any claim made against the Customer by a third party arising out of or in connection with the supply of the Goods, as delivered, or the Services; and
- (d) any breach of Clause 14.

11.2 This clause 11 shall survive termination of the Contract.

12. Insurance

12.1 Unless otherwise agreed and without prejudice to the Supplier's obligations and liabilities pursuant to any Contract, the Supplier will take out and maintain in force for the duration of each Contract, with reputable and substantial insurers, the following insurances, to be evidenced by certificates of insurance made available to Customer within 7 days of request:

- (a) employer's liability insurance or similar insurance(s) in accordance with any laws which may be applicable to the Supplier's employees, agents or sub-contractors engaged directly or indirectly in the performance of this Agreement in the amount of at least £5,000,000 for any one occurrence or the amount required by applicable law, whichever is higher;
- (b) public liability insurance in the amount of at least £5,000,000 for any one occurrence;
- (c) product liability insurance in the amount of at least £5,000,000 for any one occurrence; and
- (d) professional indemnity insurance in the amount of at least £5,000,000 for any one occurrence.

12.2 The Supplier shall also maintain the professional indemnity insurance referred to in Clause 12.1 (d) in full force and effect for a further period of six years following termination of this Agreement.

12.3 Unless agreed otherwise by Customer in writing such insurances (other than the employer's liability insurance) shall be endorsed to note Customer's interest under such insurances and to provide that underwriters waive any rights of recourse, including subrogation rights against Customer in relation to this Agreement. Such insurances shall also provide that Customer shall be given not less than 30 days notice of cancellation of, or material change to the cover.

13. Confidentiality

13.1 Each party undertakes that it shall not at any time during the Contract and for a period of two years after termination or expiry of the Contract, disclose to any person any confidential information concerning the business, assets, affairs, customers, clients or suppliers of the other party, except as permitted by clause 13.2.

13.2 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 exercising the party's rights or carrying out its 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 13; and
- (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

13.3 Neither party shall use the other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.

14. Compliance with relevant laws and policies

14.1 In performing its obligations under the Contract, the Supplier represents and warrants that it or any affiliates sub-contractors and any other third party performing services for the Supplier hereunder (hereinafter collectively referred to as "Representatives" shall:

- (a) comply with all applicable laws, statutes, regulations, rules, regulations and codes from time to time in force; and
- (b) comply with the Mandatory Policies.

14.2 The Supplier further represents and warrants that:

- (a) It will take all necessary measures to prevent corruption, other criminal offenses and other forms of gross misconduct. It takes all necessary precautionary measures to avoid gross misconduct. Irrespective of the form of participation in committing, inciting or aiding and abetting an offense, gross misconduct includes:
 - (i) serious offenses that have been committed in the course of business dealings, these include criminal offenses that involve, especially fraud, abuse of trust, document forgery or similar offenses.
 - (ii) offering, promising or granting undue benefits (especially facilitation payments) to any civil servant, public official or other office holder or person specifically bound to carry out public service duties, or members of the Management Board, managing directors or other employees of Customer;
 - (iii) offering, promising or granting undue benefits to any person engaged in a freelance capacity by Customer who is active in the award or execution of a contract, e.g. technical designers, consultants and project control officers,
 - (iv) in connection with the activity of the Supplier for Customer, offering, promising or granting undue benefits to any civil servant, public official or other office holder or person specifically bound to carry out public service duties or to any employee or appointee of any other businesses in relation to the initiation, award or execution of a contract by third parties;
- (b) it will promptly report to Customer (i) any actual or suspected material breach by it (including its Representatives) and (ii) any requests for bribes or corrupt payments by any person (including any Public Official);
- (c) it agrees that the export, import and re-export of goods may be subject to certain trade laws and regulations validly enacted by a competent authority, which may include, inter alia, European Union and United States export laws and regulations ("Trade Regulations").
- (d) in the fulfilment of its obligations under the Contract, it shall comply with all applicable Trade Regulations, which may include, but are not limited to sanctions requirements and restricted party screening in export, customs, import and in-country activities.

- (e) that neither itself nor its affiliated companies, shareholders or directors have been previously, or are currently, listed on any applicable sanctions or denied parties list (“restricted party”), which may include, inter alia, EU and U.S. lists.
 - (f) that it is currently not owned by 50% or more, individually or in the aggregate, by one or more restricted party(s).
- 14.3 A breach of criminal laws (e.g. anti-corruption laws) by Supplier (including its Representatives) in connection with the performance of its duties and obligations under this Contract or an investigation of Supplier by governmental authorities in relation thereto shall always be deemed a material breach for purposes of this Clause 14. In the event that Customer has reason to believe that a material breach of a representation and warranty has occurred, Supplier shall cooperate fully and in good faith with Customer in order to determine whether a material breach has occurred.
- 14.4 In case Customer has reason to believe that a breach of criminal laws has occurred, Customer shall (either directly or through an auditor), on reasonable notice, have the right to review and audit any books, records, accounts and any other relevant documents of Supplier during the term of the Contract and until the expiry of the applicable statutory period to maintain the respective books and records. Suppliers shall make any documents readily available, grant the necessary access to its operations and premises for such audit and provide requested copies of relevant documents.
- 15. In its business and along its supply chain Supplier agrees to protect and apply human rights, social minimum standards and environmental standards stated in the legislation which is applicable in the country where Customer, SCHENKER AG and/or Supplier are registered and/or where the Services are provided, irrespective of whether such legislation is directly applicable to Supplier or not.**
- 15.1 The following definitions apply in this clause **15**:
 - (a) **Controller, Processor, Data Subject, Personal Data, Personal Data Breach, processing and appropriate technical and organisational measures:** as defined in the Data Protection Legislation.
 - (b) **Data Protection Legislation:** all applicable data protection and privacy legislation in force from time to time in Ireland (in respect of Schenker Ireland Limited as Customer) and the UK including the UK GDPR, the Data Protection Act 2018 (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (*SI 2003/2426*) and the guidance and codes of practice issued by the Information Commissioner or other relevant regulatory authority and applicable to a party.
 - (c) **Domestic Law:** the law of the United Kingdom or a part of the United Kingdom or Ireland (in the case of Schenker Ireland Limited).
- 15.2 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause **15** is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.
- 15.3 The parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Controller and the Supplier is the Processor.
- 15.4 Without prejudice to the generality of clause **15.2**, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Supplier and/or lawful

collection of the Personal Data by the Supplier on behalf of the Customer for the duration and purposes of the Contract.

15.5 Without prejudice to the generality of clause 15.2, the Supplier shall, in relation to any Personal Data processed in connection with the performance by the Supplier of its obligations under the Contract:

- (a) process that Personal Data only on the documented written instructions of the Customer unless the Supplier is required by Domestic Law to otherwise process that Personal Data. Where the Supplier is relying on Domestic Law as the basis for processing Personal Data, the Supplier shall promptly notify the Customer of this before performing the processing required by the Domestic Law unless the Domestic Law prohibits the Supplier from so notifying the Customer;
- (b) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Customer, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
- (c) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and
- (d) not transfer any Personal Data outside of the UK unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:
 - (i) the Customer or the Supplier has provided appropriate safeguards in relation to the transfer;
 - (ii) the Data Subject has enforceable rights and effective legal remedies;
 - (iii) 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
 - (iv) the Supplier complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;
- (e) 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;
- (f) notify the Customer without undue delay on becoming aware of a Personal Data Breach;
- (g) at the written direction of the Customer, delete or return Personal Data and copies thereof to the Customer on termination of the Contract unless required by Domestic Law to store the Personal Data; and
- (h) maintain complete and accurate records and information to demonstrate its compliance with this clause 15 and allow for audits by the Customer or the Customer's designated auditor and immediately inform the Customer if, in the opinion of the Supplier, an instruction infringes the Data Protection Legislation.

- 15.6 The Customer does not consent to the Supplier appointing any third party processor of Personal Data under the Contract.
- 15.7 Either party may, at any time on not less than 30 days' notice, revise this clause 15 by replacing it with any applicable controller to processor standard clauses or similar terms adopted by the Information Commissioner or forming part of an applicable certification scheme (which shall apply when replaced by attachment to the Contract).

16. Termination

- 16.1 Without affecting any other right or remedy available to it, the Customer may terminate the Contract:
- (a) with immediate effect by giving written notice to the Supplier if:
 - (i) there is a change of Control of the Supplier; or
 - (ii) the Supplier commits a breach of clause 14.
 - (b) for convenience by giving the Supplier 20 days' written notice.
- 16.2 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:
- (a) the other party commits a material breach of any term of the Contract which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of ten days after being notified in writing to do so;
 - (b) 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), obtaining a moratorium, 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;
 - (c) 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
 - (d) the other party's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Contract is in jeopardy.

17. Consequences of termination

- 17.1 On termination of the Contract, the Supplier shall immediately deliver to the Customer all Deliverables whether or not then complete, and return all Customer Materials. If the Supplier fails to do so, then the Customer may enter the Supplier's premises and take possession of them. Until they have been returned or delivered, the Supplier shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract.
- 17.2 Termination or expiry of the Contract shall not affect the parties' rights and remedies that have accrued as at 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.

17.3 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.

18. Force majeure

18.1 If either Party is prevented, hindered or delayed from or in performing any of its obligations under this Agreement by a Force Majeure Event, then:

- (a) that Party's obligations under the Contract shall be suspended for so long as the Force Majeure Event continues and to the extent that it is so prevented, hindered or delayed;
- (b) as soon as possible after the start of the Force Majeure Event that Party shall give notice to the other Party of the nature of the Force Majeure Event, the date and time at which it started and the likely effects of the Force Majeure Event on its ability to perform its obligations;
- (c) that Party shall use all reasonable endeavours to mitigate the effects of the Force Majeure Event on the performance of its obligations under the Contract; and
- (d) as soon as practicable after the end of the Force Majeure Event that Party shall notify the other Party and resume performance of its obligations under this Contract.

18.2 If the Supplier is prevented, hindered or delayed from or in performing any of its obligations under the Contract by a Force Majeure Event, the Customer may either engage an alternative supplier to provide the Goods and/or Services for the duration of the event of Force Majeure and for a reasonable period thereafter (and provided the Customer uses reasonable endeavours to minimise its contractual commitments to the alternative supplier, the Supplier will reimburse the Customer for any additional costs incurred by the Customer in relation to such alternative supplier) and/or at any time during the event of Force Majeure terminate any Orders by giving immediate notice in writing to the Supplier.

18.3 If a Party is prevented, hindered or delayed from or in performing any of its obligations under this Agreement by a Force Majeure Event for a continuous period in excess of seven (7) days the other Party may terminate this Contract immediately by notice in writing.

19. General

19.1 Contracts with Specified Persons

- (a) Contracts with active or former Board of Management members and managing directors or senior managers from German and foreign companies that are affiliated with Deutsche Bahn AG pursuant to Section 290 of the German Commercial Code (HGB), as well as Group executives and politically exposed persons (PEP), are subject to special provisions and approval processes conducted by Customer and Deutsche Bahn AG due to specific legal and internal DB requirements or specific public interests/reputation risks. A politically exposed person (PEP) in this context means any person who holds or has held a high-ranking prominent public office at the international, European or national level (or who holds or has held a public office of comparable political importance below the national level). This includes, in particular, a) heads of state, heads of government, ministers, members of the European Commission, deputy ministers and state secretaries, b) members of parliament and members of comparable legislative bodies, c) members of the leadership bodies of political parties, d) members of the leadership bodies of audit courts, e) members of administrative, leadership and supervisory bodies of state owned companies in Germany or abroad. Formerly holding a position of this kind refers to a)

holding one of the aforementioned offices less than two years ago or b) holding a position on the Board of Directors or as a managing director, senior manager or executive within the DB Group at any point, regardless of how long ago this was.

- (b) Supplier, if he/she is a natural person, undertakes to notify Customer in writing if he/she belongs to one of the groups of persons mentioned in clause 19.1(a). If Supplier is a legal entity or company, the Supplier undertakes to notify Customer in writing if a natural person belonging to one of the groups of persons mentioned in clause 19.1(a) directly or indirectly holds more than 25% of the capital shares or voting rights within the contractor's company.
- (c) Any breaches of the obligations imposed by clauses 19.1 (a) or (b) shall entitle Customer to terminate this Contract without notice, for cause. Further rights and claims of Customer remain unaffected.

19.2 **Assignment and other dealings.**

- (a) The Customer may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with all or any of its rights and obligations under the Contract.
- (b) The Supplier shall not assign, transfer, mortgage, charge, 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 the Customer.

19.3 **Subcontracting.**

- (a) The Supplier will not be entitled to sub-contract any of the Supplier's obligations under the Contract, except with the prior written consent of Customer.
- (b) The appointment of a sub-contractor shall not affect the Supplier's obligations and liabilities under this Agreement and the Supplier shall remain primarily liable to Customer and fully responsible for the acts or omissions of its sub-contractors.
- (c) Where Customer recommends or suggests any particular person to the Supplier as a sub-contractor, Customer gives no warranty or assurance in respect of the performance of that person and no liability will be accepted by Customer in respect of the performance of that person.
- (d) In making a request pursuant to Clause 19.3 (a) the Supplier shall provide Customer with the following information about the proposed sub-contractor:
 - (i) its name, registered office and company registration number;
 - (ii) a copy of the proposed sub-contract;
 - (iii) the fees and charges to be paid by the Supplier to the proposed sub-contractor;
 - (iv) the purposes for which the proposed sub-contractor will be appointed, including the scope of any Services or Goods to be provided by the proposed sub-contractor;
- (e) confirmation that the proposed sub-contractor will comply with the terms of the Contract as if it were a Party to the same;
- (f) where the proposed sub-contractor is also an affiliate of the Supplier, evidence that demonstrates to the reasonable satisfaction of Customer that the proposed sub-contract has been agreed on "arm's-length" terms; and
- (g) any further information reasonably requested by Customer.

19.4 **Inspection of Records**

- (a) Customer, its agents and/or subcontractors and/or independent auditors on Customer's behalf shall have the right at any time to inspect:
 - (i) the Supplier's records and books relating to the supply of Goods and/or Services to Customer including without limitation the Supplier's records and books for the supply to the Supplier of goods and/or services or raw materials from other suppliers in the supply chain; and
 - (ii) the Supplier's processes of manufacture and/or assembly of the Goods and/or provision of Services and/or any other matter relating to the production, quality, standards or supply of the Goods and/or provision of Services.
- (b) Any such inspection processes shall be subject to one week's prior written notice.
- (c) The Supplier shall for a minimum of six (6) years after the Contract has expired or terminated or for as long as the Parties may agree is appropriate, keep and maintain full and accurate records required under this Agreement, including information required to validate compliance of the Goods and/or Services in accordance with the Contract.

19.5 **Notices.**

- (a) Any notice given to a party under or in connection with the Contract shall be in writing and shall be:
 - (i) 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)
- (b) Any notice shall be deemed to have been received:
 - (i) if delivered by hand, at the time the notice is left at the proper address;
 - (ii) 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
- (c) 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.

19.6 **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 the Contract. If any provision of the Contract is deemed deleted under this clause 19.6 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.

19.7 **Waiver.**

- (a) Except as set out in clause 2.8, a waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.
- (b) A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not waive that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.

19.8 **No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, or authorise either

party to make or enter into any commitments for or on behalf of the other party. Each party confirms it is acting on its own behalf and not for the benefit of any other person.

19.9 Entire agreement.

- (a) The Contract constitutes the entire agreement between the parties.
- (b) Each party acknowledges that in entering into the Contract it does not rely on 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.

19.10 Third party rights.

- (a) To the extent to which any Goods and/or Services provided pursuant to this Agreement are for the benefit of any company in the same Group as Customer that company may enforce the terms of the Contract subject to and in accordance with these Conditions and the provisions of the Contracts (Rights of Third Parties) Act 1999.
- (b) Any company in the same Group as Customer may enforce the terms of Clause 9.8 subject to and in accordance with these Conditions and the provisions of the Contracts (Rights of Third Parties) Act 1999.
- (c) Any New Service Provider may enforce the terms of Clause 17 subject to and in accordance with this Agreement and the provisions of the Contracts (Rights of Third Parties) Act 1999.
- (d) Except as provided in Clause 19.9 (a), (b) a person who is not a Party to this Agreement shall not have the right under the Contract (Rights of Third Parties) Act 1999 to enforce any of its terms.
- (e) Notwithstanding that any term of the Contract may be or become enforceable by a person who is not a Party to it, the terms of these Conditions may be varied, amended or modified without the consent of any such third Party.

19.11 Variation. Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by the parties or their authorised representatives.

19.12 Dispute Escalation

Without prejudice to either Party's right to seek interlocutory relief in the courts the Parties shall use reasonable efforts to negotiate in good faith and settle amicably any dispute that may arise out of or relate to this Agreement (or its construction, validity or termination) (a "Dispute"). If a Dispute cannot be settled through negotiations by appropriate representatives of each of the Parties, either Party may give to the other a notice in writing (a "Dispute Notice"). Within seven days of the Dispute Notice being given the Parties shall each refer the Dispute to the senior representatives nominated by each Party who shall meet in order to attempt to resolve the dispute. If the Dispute is not settled by agreement in writing between the Parties within 14 days of the Dispute Notice it shall be resolved in accordance with Clause 19.13 or, if the Parties do not wish to attempt mediation, Clause 34.

19.13 Mediation

- (a) A Dispute may (only with the agreement of both parties) be referred to mediation in accordance with the Centre for Dispute Resolution (CEDR) Model Mediation Procedure. The mediation shall be conducted

by a single mediator appointed by mutual agreement, or (failing mutual agreement within seven days of a notice from either Party to the other calling upon the other so to agree) by the Centre for Dispute Resolution. Both Parties agree to co-operate fully with such mediator, provide such assistance as is necessary to enable the mediator to discharge his duties, and to bear equally between them the fees and expenses of the mediator.

- (b) The mediation shall be conducted in England in English. The mediation shall be conducted without prejudice to the rights of any of the Parties in future proceedings.

19.14 **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.

19.15 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales for UK suppliers and Irish Law for Ireland suppliers 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.