

**THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THE PROVISIONS OF CLAUSE 6 (LIMITATION OF LIABILITY).**

**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.

**Charges:** the charges payable by the Customer for the supply of the Services in accordance with clause 5.

**Commencement Date:** has the meaning given in clause 2.2.

**Company:** M. Preymesser Logistics Limited registered in England and Wales with company number 05712316 and having its registered office at Newcombe Drive, Hawksworth Industrial Estate, Swindon, SN2 1DZ.

**Conditions:** these terms and conditions as amended from time to time in accordance with clause 10.4.

**Contract:** the contract between the Company and the Customer for the supply of 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 construed accordingly.

**Customer:** the person, company, limited liability partnership, or other legal entity who purchases Services from the Company.

**Customer Default:** has the meaning set out in clause 4.3.

**Goods:** the materials or goods to which the Services relate.

**Order:** the Customer's order for Services as set out in the Customer's purchase order form, the relevant quotation issued by the Company, or overleaf, as the case may be. The Order contains the description or specification of the Services provided by the Company to the Customer.

**Services:** the Company's storage and / or delivery services (as set out in the Order) which are supplied to the Customer in relation to the Goods.

**Company Materials:** has the meaning set out in clause 4.1(j).

**1.2 Interpretation:**

- (a) A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.

- (b) 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.
- (c) A reference to **writing** or **written** includes email and fax.

## **2. Basis of contract**

- 2.1 The Order constitutes an offer by the Customer to purchase Services in accordance with these Conditions.
- 2.2 The Order shall be deemed to be accepted on the earlier of:
  - (a) the Company's written acceptance of the Order; or
  - (b) the Company commencing provision of the Services; or
  - (c) (the Company having issued these Conditions to the Customer where the Company is already providing the Services) the Customer continues to receive the Services without objection 14 days thereafter,

at which point and on which date the Contract shall come into existence (**Commencement Date**).

- 2.3 Any samples, drawings, descriptive matter or advertising issued by the Company, and any descriptions or illustrations contained in the Company'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.
- 2.4 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.5 Any quotation given by the Company shall not constitute an offer, and is only valid for a period of three months from its date of issue.

## **3. Supply of Services and lien**

- 3.1 The Company shall supply the Services to the Customer in accordance with the Order in all material respects.
- 3.2 The Company shall use all reasonable endeavours to meet any performance dates specified in the Order, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.

- 3.3 The Company reserves the right to amend the Order if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and the Company shall notify the Customer in any such event.
- 3.4 The Company warrants to the Customer that the Services will be provided using reasonable care and skill.
- 3.5 The Company has a general lien on all Goods and documentation relating to the Goods which are in its possession, custody or control for all sums due under the Contract to the Company at any time from the Customer. The Customer shall be responsible for any storage and associated costs relating to the Goods while they are detained under lien, and the Company shall:
- (a) be entitled on giving at least 21 days' written notice to the Customer, to sell, dispose of or otherwise deal with such Goods or documentation as agent for, and at the expense of, the Customer, and to apply the proceeds in or towards payment of any sums due to the Company under the Contract;
  - (b) account to the Customer for any balance remaining after deduction of any sum due to the Company and net of any costs incurred by the Company in relation to any sale or disposal of the Goods or documentation, whereupon the Company shall be discharged of any liability whatsoever in relation to the Goods or documentation in question.
- 3.6 Where the Services include delivery by or on behalf of the Company to premises designated by the Customer, then if the Customer or its nominated recipient fails to accept delivery of the Goods at the appointed time and place, the Company shall be entitled to store the Goods at the sole risk and cost of the Customer at the Company's premises or at the premises of a third party chosen by the Company. The Customer will pay the Company on demand the full costs of storage and of delivery of the Goods to the place where they are to be stored.
- 3.7 The Company shall be entitled at the expense of the Customer to dispose of, sell or otherwise deal with the Goods at its sole discretion if, after the Company has given at least 21 days' notice in writing to the Customer, the Customer has not made any arrangements to collect or to arrange re-delivery of any Goods which have been held by the Company for 60 days and which cannot be delivered as instructed.

#### **4. Customer's obligations**

- 4.1 The Customer warrants that it is the owner of the Goods.
- 4.2 The Customer shall:

- (a) ensure that the terms of the Order are complete and accurate in all respects;
- (b) co-operate with the Company in all matters relating to the Services;
- (c) provide the Company, its employees, agents, and subcontractors, with access to the Customer's premises, and to such personnel, equipment and other facilities as may be reasonably required by the Company to enable it to perform the Services;
- (d) provide the Company with such information and materials as the Company may reasonably require in order to supply the Services, including all relevant data and information required for performing the Services, details of the precise description, weight, quantity, dimensions and particulars of the Goods, exact delivery locations and times, and any special requirements, technical details or circumstances relating to the storage, handling or delivery of the Goods, and shall ensure that such information is complete, accurate and up-to-date in all material respects;
- (e) prepare the Customer's premises (or those of the Customer's nominated recipient) for the supply of the Services (including, without limitation, delivery of the Goods thereto), including ensuring that any equipment provided by the Customer in relation to the performance of the Services is fit for purpose and safe for use by the Company's personnel or subcontractors, and that the necessary arrangements are in place at the designated delivery point to ensure that the Customer (or its nominated recipient) can accept delivery of the Goods at the appointed time and in a safe and efficient manner;
- (f) be responsible for ensuring that the Goods have been properly and sufficiently prepared, packaged, labelled and / or marked so as to render the Goods safe and suitable for being handled, stored and transported by the Company, its employees, agents and subcontractors (as the case may be) in carrying out the Services;
- (g) be solely responsible for the payment of any costs, charges, duties, taxes, levies, tolls or expenses whatsoever charged by any governmental agency or third party in relation to the Goods;
- (h) obtain and maintain all necessary licences, permissions, certifications and consents which may be required for the Goods and the Services before the date on which the Services are to start or are to be provided;
- (i) obtain and maintain appropriate insurance cover in relation to the Goods which is in all respects sufficient to insure them against all risks up to the point in time at which they are received at the Company's premises and offloading has been completed and from the point in time at which they are delivered by the Company to the delivery location designated by the Customer. **The Customer acknowledges and agrees that the Company will not effect any insurance on behalf of the Customer in relation to the Goods, and that the Company**

**will insure the Goods on its own policy only whilst they are on the Company's premises or are being transported by the Company to the Customer's designated delivery location. For the avoidance of doubt, the Goods will be at the Customer's risk (and accordingly will not be covered by the Company's insurance) until the point in time at which they have been received at the Company's premises and (if they are to be delivered other than by the Company) from the point in time at which loading of the Goods for transportation to the delivery location designated by the Customer commences;**

- (j) comply with all applicable laws, including data protection and privacy, health and safety laws, and any applicable customs clearances, security checks, or other legal or regulatory requirements relating to the Goods; and
- (k) comply with any additional obligations as set out in the Order.

4.3 If the Company's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):

- (a) without limiting or affecting any other right or remedy available to it, the Company shall have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays the Company's performance of any of its obligations;
- (b) the Company shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Company's failure or delay to perform any of its obligations as set out in clauses 4.1 and 4.3; and
- (c) the Customer shall reimburse the Company on written demand for any costs or losses sustained or incurred by the Company arising directly or indirectly from the Customer Default.

## **5. Charges and payment**

5.1 The Charges for the Services shall be set out in the Order. The Company shall invoice the Customer monthly in arrears. Where the Customer is located in the UK, the Charges and invoices will be denominated in pounds sterling (**GBP**). Where the Customer is located outside the UK, the Charges and invoices will be denominated in euros (**EUR**).

5.2 In consideration of the supply of Services by the Company, the Customer shall pay each invoice submitted by the Company:

- (a) in the currency in which the invoice is denominated;

- (b) within 30 days of the date of the invoice; and
- (c) in full and in cleared funds to a bank account nominated in writing by the Company, and

time for payment shall be of the essence of the Contract.

5.3 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 the Company to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Company, pay to the Company 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.

5.4 If the Customer fails to make a payment due to the Company under the Contract by the due date, then, without limiting the Company's remedies under clause 7, 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 5.4 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%.

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

**6. Limitation of liability: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE.**

6.1 The Company has obtained insurance cover in respect of its own legal liability for individual claims not exceeding EUR 50,000 (fifty thousand euros) per claim, subject to an annual limit of EUR 500,000 (five hundred thousand euros), in both cases regardless of the currency in which the Charges and invoices are denominated. The limits and exclusions in this clause reflect the insurance cover the Company has been able to arrange and the Customer is responsible for making its own arrangements for the insurance of any excess loss.

6.2 Nothing in the Contract limits any liability which cannot legally be limited, including liability for:

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

- 6.3 Subject to clause 6.2, the Company's total liability to the Customer shall not exceed EUR 500,000 (five hundred thousand Euros) or the GBP equivalent thereof on the date on which such liability arises. The Company's total liability includes liability in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Contract.
- 6.4 Subject to clause 6.2, the following types of loss are wholly excluded by the parties:
- (a) Loss of profits.
  - (b) Loss of sales or business.
  - (c) Loss of agreements or contracts.
  - (d) Loss of anticipated savings.
  - (e) Loss of use or corruption of software, data or information.
  - (f) Loss of or damage to goodwill.
  - (g) Indirect or consequential loss.
- 6.5 This clause 6 shall survive termination of the Contract.

## **7. Termination**

- 7.1 Without affecting any other right or remedy available to it, either party may terminate the Contract by giving the other party 12 months' prior written notice.
- 7.2 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 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), 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;
  - (b) 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
  - (c) 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.

7.3 Without affecting any other right or remedy available to it, the Company may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment.

7.4 Without affecting any other right or remedy available to it, the Company may suspend the supply of Services under the Contract or any other contract between the Customer and the Company if the Customer fails to pay any amount due under the Contract on the due date for payment, the Customer becomes subject to any of the events listed in clause 7.2(a) to clause 7.2(c), or the Company reasonably believes that the Customer is about to become subject to any of them.

## **8. Consequences of termination**

8.1 On termination of the Contract the Customer shall immediately pay to the Company all of the Company's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the Company shall submit an invoice, which shall be payable by the Customer immediately on receipt.

8.2 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.

8.3 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.

## **9. Force majeure**

9.1 In this clause 9, **Force Majeure Event** means any circumstance not within a party's reasonable control including, without limitation:

- (a) acts of God, flood, drought, earthquake or other natural disaster;
- (b) epidemic or pandemic;
- (c) 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;
- (d) nuclear, chemical or biological contamination or sonic boom;
- (e) any law or any action taken by a government or public authority;
- (f) collapse of buildings, fire, explosion or accident;
- (g) non-performance by suppliers or subcontractors; and

- (h) interruption or failure of utility service; and
- (i) breakdown or failure of any plant, machinery or vehicles (including, without limitation, the Company's cranes and vehicles).

9.2 Provided it has complied with clause 9.3, if a party is prevented, hindered or delayed in or from performing any of its obligations under this agreement by a Force Majeure Event (**Affected Party**), the Affected Party shall not be in breach of the Contract or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.

9.3 The Affected Party shall:

- (a) as soon as reasonably practicable after the start of the Force Majeure Event, notify the other party of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the agreement; and
- (b) use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.

9.4 If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than four weeks, the party not affected by the Force Majeure Event may terminate this agreement by giving four weeks' written notice to the Affected Party.

## **10. General**

### **10.1 Assignment and other dealings.**

- (a) The Company 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.
- (b) 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 the Company.

### **10.2 Confidentiality.**

- (a) 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 9.3(b).
- (b) Each party may disclose the other party's confidential information:

- (i) to its employees, officers, representatives, 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, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 10.2; and
  - (ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- (c) Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.

**10.3 Entire agreement.**

- (a) 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.
- (b) 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.
- (c) Nothing in this clause shall limit or exclude any liability for fraud.

**10.4 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).

**10.5 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.

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

provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

#### 10.7 **Notices.**

- (a) Any notice or other communication 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 the address specified in the Order; or sent by fax to the published fax number of the recipient.
- (b) Any notice or communication shall be deemed to have been received:
  - (i) if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; and
  - (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 or at the time recorded by the delivery service; and
  - (iii) if sent by email or by fax, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause 9.8(b)(iii), business hours means 6.00am to 4.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.
- (c) 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.

#### 10.8 **Third party rights.**

- (a) 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.
- (b) The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.

10.9 **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.

10.10 **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.