**TERMS AND CONDITIONS FOR PROVISION OF ROAD FREIGHT SERVICES**

**COMMERCIALLY CONFIDENTIAL**

1. **DEFINITIONS AND INTERPRETATION**
   1. In these Terms and Conditions, the following expressions shall have the following meanings unless the context otherwise requires:

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| **“ADR**” | means the European Agreement concerning the International Carriage of Dangerous Goods by Road; |
| **“Additional Services”** | means all services that are additional to the basic transportation services such as:   * express delivery * temperature controlled and or * ADR transportation; |
| **“Additional Services Charges”** | means the price for additional services as set out in the Contract Particulars or as may be amended by mutual agreement of the parties; |
| **"Affiliate"** | means in relation to a company, any entity controlled by that company or any entity which controls that company or any entity which is controlled by another entity, which also controls that company whether such control is direct or indirect. For the purpose of this definition, a particular company is:   1. directly controlled by another company or companies if the latter hold/holds in the aggregate fifty percent (50%) or more of (a) the shares carrying votes exercisable at a general meeting (or its equivalent) of the particular company if such company is a corporation issuing voting shares or (b) the control rights or interests if it is not a corporation; and 2. indirectly controlled by a company or companies (“the parent company or companies”) if a series of companies can be specified, beginning with the parent company or companies and ending with the particular company, so related that each company or companies of the series, except the parent company or companies, directly controlled by one or more companies earlier in the series; |
| **“Charges”** | means   * the charges payable to the Freight Services Provider for the provision of the Services in accordance with the rates set out in the Contract Particulars and * if Additional Services are performed in respect of a specific Transportation Order, the Additional Services Charges for those Additional Services; |
| **“Clearview Affiliate”** | means any “MY COMPANY” Affiliate for which “MY COMPANY” shall be liable for payment of the Charges relating to Services provided to such “MY COMPANY” Affiliate pursuant to these Terms and Conditions, as notified by “MY COMPANY” to the Freight Services Provider; |
| **“CMR Convention”** | means the Convention on the Contract for the International Carriage of Goods by Road; |
| **“Collection Point”** | means the location that the Freight Services Provider is to collect a Load from as set out in a Transportation Order; |
| **“Confidential Information”** | means information provided in any form, information which at the time of its provision is marked or otherwise designated to show expressly or by necessary implication that it is imparted in confidence, any trade secrets, confidential or proprietary information and material of either party disclosed by any means, including without limitation information relating to software, data, databases, systems, processes, methodologies, plans, specifications, know-how, ideas or other business, commercial or financial information, intellectual property rights or any other information that is confidential in nature; |
| **“Contract Particulars”** | means the details set out in Schedule 1 or as may be amended from time to time when a new version is issued by “MY COMPANY” expressly stating “MY COMPANY”’s intention for the new version to be the Contract Particulars, and that new version is subsequently acknowledged as such by the Freight Services Provider; |
| **“Customs Clearance Point”** | means the place at which a customs government regulatory authority reviews and clears a Load for export or import into a country; |
| **“Delivery Point**” | means the delivery destination for each Load specified by Requester in a Transportation Order (including but not limited to any permitted sub-contracted transport, warehousing or cross-docking operations, set out in a Transportation Order); |
| **“Effective Date”** | means 1 April 2018; |
| **“Employees”** | means the personnel involved in the performance of the Freight Services Provider’s obligations under these Terms and Conditions from time to time; |
| **“Environmental Losses”** | means any and all costs, disbursements, damages, payments and expenses made voluntarily or in fulfilment of its legal obligations by “MY COMPANY” or its Affiliates in relation to an adverse change in a species and natural habitats, water and land, where such change has arisen directly or indirectly in connection with that natural resource or natural resource service’s coming into contact with the Products outside of the Products’ intended use, whether incurred in respect of a deterioration of the existing condition of the environment and steps taken in order to prevent or decelerate a potential impact to the existing environmental condition; |
| “**Force Majeure Event”** | has the meaning set out in clause 17.1; |
| **“Freight Services Provider”** | means   * generally, in respect of these Terms and Conditions, the party entering into these Terms and Conditions as the Freight Services Provider; and * in respect of a Transportation Order, any legal entity (whether the Freight Services Provider identified in the preceding paragraph, its Affiliate, or its subcontractor) who has   + received the Transportation Order from the Requester or   + is performing Services in respect of that Transportation Order; |
| **“Fuel Price Mechanism”** | means the mechanism to vary the Charges in relation to certain changes in the cost of fuel pursuant to clause 4.4, and as further set out in Schedule 4; |
| **“Good Industry Practice”** | means the skill, care, diligence, prudence and foresight that could reasonably be expected to be provided by a Freight Services Provider offering the same or similar services at a similar operational scale to the Services carried out in accordance and compliance with all relevant laws, regulations, codes of practice and all requirements of any regulatory authorities, (including without limitation any requirements to obtain authorizations, licenses or consents to store and/or to transport the Products and perform any of the Services under these Terms and Conditions); |
| **“Hague-Visby Rules”** | means the international convention for the Unification of certain rules of law relating to bills of lading as amended by the 1968 Brussels protocol to amend the international convention for the unification of certain rules of law relating to bills of lading; |
| **“IMDG”** | means the International Maritime Dangerous Goods Code; |
| **“Incoming Product Issue”** | means at the point the Products are delivered into the Freight Services Provider’s care: (a) any shortfall in the number of Products as compared with the advised number to be dispatched; or (b) any difference in the Products as compared with the advised nature of Products to be dispatched; or (c) any damage to, or destruction of, the Products when received or collected by the Freight Services Provider at the Collection Point that is apparent on visual inspection of the outer packaging; |
| **“Load”** | means the Products being transported by the Freight Services Provider from a Collection Point to a Delivery Point pursuant to a Transportation Order or as instructed by Requester; |
| **“Requester”** | means the party issuing the Transportation Order to the Freight Services Provider; |
| **“Period of Care”** | means the period between:   * the commencement of the Load being loaded onto the Transportation Vehicle at the Collection Point   and   * the completion of the Load being unloaded from the Transportation Vehicle at the Delivery Point and placed in the care of the consignee (whether such consignee is an “MY COMPANY” Affiliate or a designated third party) set out in the Transportation Order; |
| **“Products”** | means the individual items in a Load for which Services are being performed in order that “MY COMPANY” or “MY COMPANY”’s Affiliate may place finished goods on the market for sale to consumers, as set out in either the Transportation Order or the Contract Particulars against the Route set out in the Transportation Order; |
| **““MY COMPANY””** | means “COMPANY NAME”. a company incorporated under the laws of “COUNTRY” with its office at “ADRESS”; |
| **“Routes”** | means the routes on which the Freight Services Provider is appointed by “MY COMPANY” to provide the Services, as set out in the Contract Particulars or as alternatively may be agreed in a Transportation Order; |
| **“Services”** | means   * transportation of Products from the Collection Point to the Delivery Point via the Routes, as may be set out in any binding Transportation Order; * any Additional Services; and * the performance of all other obligations set out in these Terms and Conditions |
| **“Technical Agreement”** | means any and all technical or quality agreements signed between the Freight Services Provider (or their Affiliate) and either “MY COMPANY” or “MY COMPANY”’s Affiliate, as may be amended by its signatories or superseded from time to time, specifying technical and quality responsibilities in respect of the Products to be delivered via a Route including by way of example the procedures for the transportation of medicines; |
| **“Term”** | has the meaning set out in clause 2.2; |
| **“Terms and Conditions”** | means   * these terms and conditions; * the Contract Particulars; * the Schedules; and * any documents incorporated by reference   and except where the context would produce a wholly unnatural interpretation, shall also mean the Transportation Order; |
| **“TMS Website”** | means the electronic platform utilized by the parties for the placing and acknowledgement of Transportation Orders for the Services pursuant to these Terms and Conditions; |
| **“Transportation Order”** | means any written instruction (whether issued electronically, by email or in writing) from an Requester for the Freight Services Provider to perform the Services specifically for the Route and Loads set out within that written request; |
| **“Transportation Vehicles”** | means any and all vehicles utilized by the Freight Services Provider for the transportation and delivery of the Products; |
| **“VAT”** | means value added tax chargeable under the local laws of any country which the Products are exported from or imported into and any similar sales, replacement or additional tax. |

* 1. The expression “person” means any individual, firm, partnership, company, corporation, body corporate, organisation, association, foundation, trust, government, state, government or state agency (in each case whether or not having a separate legal personality and wherever formed or organised) and a reference to a ‘company’ shall include any company, corporation or other body corporate wherever formed or organised.
  2. The headings to the clauses, Schedules and paragraphs in the Schedules shall not affect any construction of those clauses, Schedules and paragraphs.
  3. Any reference to a convention, statute or statutory provision shall be construed as a reference to that statute or statutory provision and to all orders, statutory instruments, regulations or other subordinate legislation made under the relevant statute as in force at the date of these Terms and Conditions and as amended, consolidated, modified, extended, re-enacted or replaced from time to time.
  4. Any reference to an event occurring on a “day” means occurring between 0600 on a calendar day and 0559 on the subsequent calendar day. Any reference to a week means between 0600 on a Monday and 0559 on the subsequent Monday. Any reference in or under these Terms and Conditions to time means the time in the country in which the Collection or Delivery that is relevant to the event referencing that time is to occur (for example where there is a Collection in a facility, any event related to that Collection that must occur on or before 1100 must be on or before 1100 this facility.

1. **TERM & APPOINTMENT**
   1. The Freight Services Provider shall perform the Services in accordance with these Terms and Conditions. In respect of any obligation set out in these Terms and Conditions being relevant solely to an Additional Service, that obligation shall only apply when a Transportation Order expressly sets out the requirement to perform the Additional Service.
   2. These Terms and Conditions shall take effect on the Effective Date and subject always to earlier termination in accordance with its terms, shall remain in force until 31 March 2019 (the “**Term**”).
   3. For any terms in relation to the provision of the Services that are not provided for in these Terms and Conditions, while Loads are being transported on land the CMR Convention shall apply and while Loads are being transported on water the Hague-Visby Rules shall apply.
2. **APPOINTMENT**
   1. Commencing on the Effective Date and throughout the Term, the Freight Services Provider shall perform the Services for the Routes in accordance with these Terms and Conditions. The Freight Services Provider shall deliver the quantity of Products from the Collection Point to the Delivery Point as specified in the Transportation Order. For each Transportation Order, the time of collection of each Load and the time of delivery of each Load shall be of the essence.
   2. The Freight Services Provider shall provide “MY COMPANY” with a Key Performance Indicator (“KPI”) report each month utilising the template provided in Schedule 2 and following the process set out in Schedule 2. The Freight Services Provider shall meet all the KPIs in its performance of the Services.
   3. The Freight Services Provider warrants, represents and undertakes for itself and on behalf of its Affiliates on a continuing basis:
3. that it has full capacity and authority to enter into and perform its obligations under these Terms and Conditions;
4. that it has and shall maintain in force all necessary licences, permits and consents to enter into and perform its obligations under these Terms and Conditions;
5. that performance of the Services shall comply with all applicable laws, regulations, standards and licences applicable to the supply of the Services;
6. to use sufficient and appropriately experienced and qualified Employees all of whom have had suitable technical training for the performance of the Services;
7. to devote such time, attention and skill as may be necessary for the provision of the Services;
8. that it will exercise proper controls so as to detect and prevent loss and fraud (including, without limitation, theft) of any Product and any illegal activity by any of the Employees;
9. that it is not, as at the Effective Date, subject to any litigation and is not aware of any threat of litigation that could impact on its ability to provide the Services or impact on the reputation of “MY COMPANY” and that it will immediately notify “MY COMPANY” if, after the Effective Date, it becomes subject to any such litigation or threat of litigation;
10. that it shall carry out the Services in accordance with Good Industry Practice;
11. that the provision and performance of the Services and “MY COMPANY”’s receipt of same shall not infringe any contractual, equitable, or intellectual property rights of any third party;
12. that it will not make any statement orally or in writing, publicly or privately or do any act or otherwise conduct itself in such a manner as will or may disparage “MY COMPANY” or any “MY COMPANY” Affiliates, bring them, any of their employees or their Products or brands into disrepute or damage any of “MY COMPANY”’s brands or otherwise damage the reputation of “MY COMPANY” or any “MY COMPANY” Affiliate; and
13. that in performance of the Services it shall comply with the operational instructions and standard operating procedures set out in Schedule 3.
    1. The Freight Services Provider shall immediately notify “MY COMPANY” in writing of all relevant changes in its business that may impact significantly on its performance of the Services.
14. **CHARGES**
    1. The Charges for each Route are set out in the Contract Particulars. The Charges include all Services relevant to performance of a Transportation Order. Other than the Charges, the Freight Services Provider shall not claim any compensation from “MY COMPANY” and or Requester for the Services.
    2. If a Clearview Affiliate is the consignee on a Transportation Order for an ENA Route, “MY COMPANY” shall pay the Charges. Otherwise, except where the Freight Services Provider is expressly instructed otherwise, the party responsible for payment in accordance with the incoterms set out on the documentation related to that Transportation Order shall pay the Charges for any Services.
    3. The Charges shall be as set out in the Contract Particulars and shall remain fixed throughout the Term and may only be varied in accordance with clause 4.4, clause 4.5 or clause 4.7. All Charges, Additional Services Charges and payments referred to in these Terms and Conditions are exclusive of custom duties and VAT applied by authorities on Delivery Point (which if applicable shall be payable by the party liable for the Charges) but inclusive of all other taxes, duties, levies, imposts and fees. All invoices shall include proof of delivery of the Loads to which the invoices refers.
    4. “MY COMPANY” understands the impact of changing fuel prices on the transport industry and as such utilises a Fuel Price Mechanism to balance this uncertainty. The Charges may be varied quarterly during the Term in accordance with the Fuel Price Mechanism as calculated by “MY COMPANY” in accordance with the provisions of Schedule 4. No amendments will be made to the Fuel Price Mechanism during the Term.
    5. In the event of a substantial change in economic conditions from the prevailing conditions at the date the Freight Services Provider submitted its tender as part of the ITT Process (including but not limited to, material changes in oil prices or inflation rates), “MY COMPANY” and the Freight Services Provider, on request from either party, may request an adjustment to the Charges in writing during the period from 1 September 2018 to 7 September 2018 only. On a party’s receipt of such written request the parties may negotiate an appropriate adjustment to the Charges from 1 September 2018 to 7 September 2018. If the parties fail to agree an appropriate adjustment in the Charges by 30 September 2018, the Charges shall not be adjusted but either party may terminate the Terms and Conditions on three months’ written notice to the other party. If notice to terminate is served on “MY COMPANY” by the Freight Services Provider in accordance with this clause 4.5, the Freight Services Provider shall comply with the obligations set out in these Terms and Conditions, including but not limited to the obligations set out in clause 15.1 and 15.2.
    6. All claims by the Freight Services Provider for demurrage must be accompanied by a demurrage note issued by the site where the demurrage was incurred. No demurrage shall be charged or chargeable by the Freight Services Provider for (i) the first 8 hours of waiting for loadings taking place at “MY COMPANY” Affiliate’ factory “…” and (ii) the first 6 hours of waiting time for loading taking place at “MY COMPANY” Affiliate’ factory “…” and (iii) the first 3 hours of waiting at all other Collection Points and Delivery Points. In any event, if loading or unloading is delayed due to the late arrival of the Freight Services Provider no demurrage shall be charged or chargeable by the Freight Services Provider for the first 24 hours of waiting. Any Freight Services Provider claims for demurrage must be reported to “MY COMPANY” and Requester by the 14th day of the month following the month in which the Transportation Order was completed, failing which such claims are hereby irrevocably waived by the Freight Services Provider. Claims for demurrage fees per incident shall not be higher than the amounts set out in the Contract Particulars. “MY COMPANY” and Requester shall not be liable and shall not accept any other demurrage charges other than those incurred and claimed strictly in accordance with this clause 4.6.
    7. The Freight Services Provider may reduce the Charges at any time during the Term and such reduction shall take effect from the date that the parties agree to an updated Contracts Particular.
15. **CAPACITY & TRANSPORTATION ORDERS**
    1. The Freight Services Provider represents and warrants that it has the capacity to meet the weekly capacity (in trucks) and the daily capacity (in trucks) as set out in the Contract Particulars sent to the Freight Services Provider (the “**Capacity Commitment**”). Subject to clause 5.2, in the event that the Freight Services Provider is unable to maintain the Capacity Commitment, or is unwilling to accept Transportation Orders within the Capacity Commitment, the Freight Services Provider shall forthwith pay to Requester or reduce any amount owing by Requester to the Freight Services Provider for each Transportation Order declined that is within the Capacity Commitment, which shall be equal to an amount of €300 (three hundred euros) per Transportation Order. The Freight Services Provider agrees that these provisions are a reasonable estimate of Requester’s loss and shall not constitute a penalty.
    2. In the event that the request for Services from Requester exceeds the Capacity Commitment, the Freight Services Provider may only reject the Transportation Order in the following manner:
       * 1. In the event the Transportation Order is received by the Freight Services Provider more than one day before loading the Freight Services Provider may reject the Transportation Order no later than 11:00 am (in the country of loading) the weekday (i.e. not Saturday or Sunday) before loading and
         2. In the event the Transportation Order is received by the Freight Services Provider on the day before loading the Freight Services Provider may reject the Transportation Order no later than two (2) hours from receipt of the Transportation Order by the Freight Services Provider and
         3. If the Transportation Order was issued via the TMS Website, the Transportation Order shall be declined by the Freight Services Provider via the TMS Website. If the Transportation Order was issued to the Freight Services Provider via email, the Transportation Order shall be declined by the Freight Services Provider via email.

In the event that a Transportation Order exceeding the Capacity Commitment is not rejected by the Freight Services Provider in accordance with 5.2 (a) to (c), the Transportation Order shall automatically be binding on the Freight Services Provider.

* 1. An Requester may at any time issue to the Freight Services Provider a Transportation Order for Loads to be collected from a Collection Point and delivered to a Delivery Point. All such Transportation Orders will be issued either:

1. electronically through the TMS Website or
2. via email

and shall constitute a firm order for Loads and subject to clause 5.2 shall be binding on the Freight Services Provider once the Requester issues the Transportation Order to the Freight Services Provider. Transportation Orders shall be subject solely to these Terms and Conditions, plus any terms that cannot be excluded under law. All Transportation Orders must be placed by Requester or its Affiliates no later than 1:15pm (in the country of loading) on the day before loading. The Freight Services Provider shall utilise the TMS Website to book all loading slots unless otherwise instructed. “MY COMPANY” shall, in its sole discretion, decide which Freight Services Providers may use the TMS Website for the provision of the Services. The Freight Services Provider shall be liable for any costs or fees associated with booking slots and accepting Transportation Orders from “MY COMPANY” and its Affiliates on the TMS Website, and all such costs and fees shall be paid by the Freight Services Provider directly to the entity that owns and/or runs the TMS Website. The fees during the Term for the TMS website are as follows: €1.11 per load for each confirmed Transportation Order and an additional €1.67 per load for each loading/unloading slot. The fees set out in the previous sentence are included in the Charges.

* 1. Requester may cancel a Transportation Order at any time between 0800 and 1700 Monday to Friday (in the country of loading), provided such cancellation is sent up to twelve (12) hours before a planned loading time, without incurring a cancellation fee or any other fee for the cancellation from the Freight Services Provider. Where Requester cancels a Transportation Order less than twelve (12) hours before a planned loading time, the Freight Services Provider shall be entitled to charge to the Requester a maximum of €300 (three hundred euros) for each Transportation Order so cancelled.
  2. Any volumes, forecasts, throughput predictions or activity levels provided by “MY COMPANY” or the Requester before or following the Effective Date are purely indicative estimates of “MY COMPANY” and Requester’s likely requirements for the Services. Nothing in these Terms and Conditions shall be deemed to form a commitment by “MY COMPANY” and or Requester to purchase a certain quantity of Services (or any Services at all) from the Freight Services Provider or create any relationship of exclusivity between the Freight Services Provider and the Requester or Requester Affiliates.

1. **COLLECTION AND DELIVERY**
   1. The Requester shall endeavour to arrange for the Products in a Transportation Order to be made available for collection by the Freight Services Provider from the Collection Point. In the event that the Load is made available for collection by the Freight Services Provider more than three hours late the Freight Services Provider shall be entitled to charge Requester a maximum amount of €300 (three hundred euros) per Transportation Order.
   2. Without prejudice to Requester’s other rights whether hereunder or at law, in the event the Freight Services Provider arrives more than:
2. three (3) hours late at a Collection Point, the Freight Services Provider shall forthwith pay to Requester or reduce any amount owing by Requester to the Freight Services Provider by an amount equal for each hour to the hourly demurrage fee requested by the Freight Services Provider during the Term;
3. twelve (12) hours late at a Collection Point for any Loads, Requester shall be entitled to terminate the Transportation Order forthwith without liability and the Freight Services Provider shall forthwith pay to Requester or reduce any amount owing by Requester to the Freight Services Provider by an amount equal to the demurrage fee requested by the Freight Services Provider during the Term;
4. one (1) hour late at a Delivery Point, the Freight Services Provider shall forthwith pay to Requester or reduce any amount owing by Requester to the Freight Services Provider by the amount equal for each hour to the hourly demurrage fee requested by the Freight Services Provider during the Term.

The Freight Services Provider agrees that these provisions are a reasonable estimate of Requester’s loss and shall not constitute a penalty.

* 1. The Freight Services Provider shall be responsible for ensuring that Products are loaded in accordance with any “MY COMPANY” instructions, stowed securely in the Transportation Vehicles, following the correct loading pattern to ensure that weight is correctly balanced across the vehicle axles; securing the Loads as required with strapping, rear loading bars and dunnage to avoid any movement of the Loads during transportation and ensuring that Loads are secure from theft and or interference.
  2. The Freight Services Provider shall meet the transit times specified in the Contract Particulars. If a Transportation Order is identified as an express delivery but the Services are delivered within the regular transit time, “MY COMPANY” and or Requester will pay for regular delivery only.

1. **PRODUCT LOSS AND PRODUCT DAMAGE/DESTRUCTION**
   1. Products shall be deemed to have been delivered in full and in good condition to the Freight Services Provider unless the Freight Services Provider has noted any Incoming Product Issue on the delivery documents signed by both the Requester and the Freight Services Provider’s Employee (CMR documents) at the Collection Point. Where Products are damaged prior to their delivery to the Freight Services Provider and the Freight Services Provider has complied with the foregoing, “MY COMPANY” may request the Freight Services Provider (at its discretion and at reasonable cost to “MY COMPANY”) to dispose of such damaged Products in a manner firstly approved by “MY COMPANY”.
   2. “MY COMPANY” shall inform the Freight Services Provider in writing of all damages to the Products which are apparent on unloading of a Load at the Delivery Point. The Freight Services Provider shall be liable to “MY COMPANY” for any lost, damaged or delayed Loads during the Period of Care including any payments made by “MY COMPANY” or its Affiliates to any third parties (including Requesters) or “MY COMPANY” Affiliates in this regard.
   3. During the Period of Care:

(a) where any Products are lost, damaged or delayed while being transported on land, the Freight Services Provider’s liability in relation to this clause 7 shall be governed by and limited in accordance with the CMR Convention; and

(b) where any Products are lost, damaged or delayed while being transported on the water, the Freight Services Provider’s liability in relation to this clause 7 shall be governed by and limited in accordance with the Hague-Visby Rules.

* 1. All payments relating to the Freight Services Provider’s liability under this clause 7 shall be made by the Freight Services Provider to “MY COMPANY” within twenty eight (28) days of the same being ascertained, unless such damage, loss or destruction was notified to “MY COMPANY” in advance as an Incoming Product Issue in the manner required under clause 7.1. Without prejudice to the generality of the foregoing, the Freight Services Provider shall also be liable for any loss, damage or destruction of any Products due to a failure by the Freight Services Provider to comply with any Technical Agreement.
  2. The Freight Services Provider shall have no liability for any destruction or loss of or damage to the Products which occurs other than during the Period of Care. The preceding sentence shall not apply where such damage has occurred due to the negligence of the Freight Services Provider, its employees or agents or the cause of such destruction or loss of or damage to the Products was an act or omission that occurred during the Period of Care.

1. **QUALITY & SECURITY**
   1. The Freight Services Provider shall ensure that and warrants that the Transportation Vehicles are clean both externally and internally when presented for loading and that the internal and external cargo area of all such Transportation Vehicles is dry, free from odours, empty, leak proof, free of any contamination and or infestation, tight and secure, and of a condition acceptable by Requester for the transportation of the Products.
   2. In the event the Freight Services Provider is assigned routes from “MY COMPANY”’s Affiliate healthcare factories or any supplier of medicines and hygiene products to “MY COMPANY”, Requester and its Affiliates, the Freight Services Provider shall enter into and execute a Technical Agreement in the form provided by “MY COMPANY” to the Freight Services Provider. The Freight Services Provider shall comply with any and all Technical Agreements into which it has entered in respect of the Products.
   3. The Freight Services Provider’s drivers shall be of overall smart appearance, behave in a socially and professionally acceptable manner and adhere to all local site or factory regulations at the Collection Point and Delivery Point, which may include a no smoking policy.
   4. During the Period of Care, the Load shall not be left unattended. Unless there is written notification from “MY COMPANY”, the Freight Services Provider’s driver must supervise the loading of the Products at the Collection Point and shall apply seals to the Transportation Vehicles upon completion of loading. The Freight Services Provider’s drivers who are obliged to park the Transportation Vehicles shall only do so at a secured parking location.
   5. Freight Services Provider shall be liable for any and all interferences with the Load during the Period of Care for any purpose whatsoever including but not limited to facilitation of the smuggling of goods or violation of any laws or regulations. The Freight Services Provider shall reimburse “MY COMPANY” for any fines or costs (including legal expenses) incurred by “MY COMPANY” or “MY COMPANY” Affiliates in this regard.
   6. The Freight Services Provider warrants and undertakes that its Employees and Sub-contractors shall not engage in the trading of any Products whether on the internet or otherwise.
   7. In the event that any Load is delayed or may be delayed as a result of actions, instructions or investigations of any regional, national, or supranational authorities, the Freight Services Provider shall inform “MY COMPANY” immediately. The Freight Services Provider shall keep “MY COMPANY” informed at all times of any communications with regional, national, or supranational authorities and shall follow “MY COMPANY”’s instructions in this regard, to the maximum extent permitted by law or by instructions of the government authorities. The Freight Services Provider acknowledges that failure to comply with this clause or clause 9.10 may lead to regulatory fines or loss of reputation or goodwill for “MY COMPANY” or “MY COMPANY”’s Affiliates.
   8. From time to time, “MY COMPANY” may require the Freight Services Provider to furnish information relating to compliance with various industry good practices, environmental health and safety regulations and other standards that may be applicable in the handling or transportation of the Products. Freight Services Provider agrees that it shall in good faith extend its full cooperation to all such requests. Freight Services Provider further acknowledges that any failure to promptly respond to such requests, or a failure to satisfy Freight Services Provider that it is in compliance with the said practices, regulations and standards, will amount to a material breach of these Terms and Conditions.
2. **DOCUMENTATION**
   1. Any terms and conditions set out in a consignment note, Bill of Lading, airwaybill or other document issued by the Freight Services Provider pursuant to performance of a Transportation Order (“Other Terms”) that are not required by law and seek to conflict with or purport to amend the terms for providing the Services as set out in these Terms and Conditions shall be null and void and of no effect and the Freight Services Provider warrants, promises, represents and undertakes that it will not in any circumstances seek to incorporate, rely on or enforce any Other Terms.
   2. The Freight Services Provider shall be responsible for ensuring that all transport documents (including customs documents and certificates where appropriate) are used in the correct manner and completed to the satisfaction of both “MY COMPANY” and the relevant regulatory and or government authorities. The Freight Services Provider shall retain copies of these documents and make them available to “MY COMPANY” on demand within a reasonable time.
   3. The Freight Services Provider shall ensure it has in place all documentation required for delivery of the Loads and customs clearance and VAT payments.
   4. The Freight Services Provider shall ensure that it prepares, collects at the time of collection at the Collection Point and preserves all documentation required for custom clearance and payment of VAT for the Loads at least five (5) calendar days before arrival of each Load at any Custom Clearance Point. The Freight Services Provider shall notify “MY COMPANY” of any documents that must be provided by “MY COMPANY” or “MY COMPANY” Affiliates under law for customs clearance and VAT or custom duty payment purposes at least five (5) calendar days before the arrival of a Load at a Customs Clearance Point.
   5. Where customs clearance is being performed by a third party nominated by “MY COMPANY”, the Freight Services Provider shall:
3. provide in a timely manner to that third party all documentation and information necessary to allow the third party to complete customs clearance on or before arrival of a Load at a Customs Clearance Point;
4. pay the third party directly at the rates agreed between “MY COMPANY” and the nominated third party and
5. the costs, fees and expenses associated with the performance of customs clearance by a third party nominated by “MY COMPANY” shall be included in the Charges.
   1. The Freight Services Provider shall be liable for any costs damages and or expenses incurred (whether by the Freight Services Provider or by “MY COMPANY” or “MY COMPANY” Affiliates) for the Freight Services Provider’s failure to adhere to timelines or obligations set out in clause 9.4 and 9.5 (including but not limited to demurrage, storage, detention, electricity, waiting, alternative transport, security, penalties and interest charged on late or non-payment of VAT, or any relevant costs incurred due to custom delays).
   2. In carrying out its obligations set out in this clause 9, the Freight Services Provider may require a power of attorney to act and or make payments on behalf of “MY COMPANY” or an “MY COMPANY” Affiliate. “MY COMPANY” may on request by the Freight Services Provider issue it with a power of attorney in such form as is reasonably necessary to permit the Freight Services Provider to undertake its obligations as set out in clause 9. The Freight Services Provider shall identify all necessary powers of attorney prior to commencement of the provision of the Services in respect of each Route.
   3. With respect to Loads transported on the water, where some Products are classified under IMDG as dangerous goods, “MY COMPANY” or Requester shall notify the Freight Services Provider of such classification in advance of collection and the Freight Services Provider shall ensure that transportation of any and all these Products shall comply with IMDG and any other laws and regulations for the transportation of dangerous goods by sea (including but not limited to DG labelling).
   4. With respect to Loads transported on land, some Products are classified under the ADR as “limited quantity” and can be transported without the required ADR equipment. The Freight Services Provider shall ensure that Transportation Vehicles loaded with these Products shall have white tables clearly stating “LTD QTY” at no additional charge. The Freight Services Provider shall also ensure that all drivers loading Products are internally trained in the scope of requirements, responsibility and duties of the driver connected with the Load. Drivers may be asked by “MY COMPANY” to sign short confirmation that they are trained to carry goods under limited quantity in accordance with ADR.
   5. The Freight Services Provider shall keep complete written records of all communications with regional, national, and supranational authorities related to any Transportation Order and all information relating to compliance with various industry good practices, environmental health and safety regulations and other standards that may be applicable in the handling of the Products and performance of the Services. Such written records shall include the date and time of the communications. The Freight Services Provider shall retain records for two (2) years after completion of the Transportation Order or (if longer) as otherwise required under local laws. “MY COMPANY”’s authorised representatives shall be granted access to information in any form (at the Freight Services Provider’s premises or elsewhere) which contains or reflects any agreement, term, condition or transaction between the Freight Services Provider and a third party or “MY COMPANY” or any Affiliate of “MY COMPANY” which is directly or indirectly related to these Terms and Conditions. Such information shall include, but not be limited to, access to employees, agents or subcontractors of the Freight Services Provider. In no event shall “MY COMPANY” or its authorised representatives be given access to the compensation or other personal information related to the employees of the Freight Services Provider or other information which the Freight Services Provider may be prohibited from disclosing under any laws applicable to that disclosure.
6. **PAYMENT**
   1. The Freight Services Provider shall invoice “MY COMPANY” or the relevant “MY COMPANY” Affiliate for the Charges due and payable in respect of the Services in the same month in which the Transportation Order was completed, save that the Freight Services Provider shall invoice “MY COMPANY” for all Charges relating to any Loads delivered to any Clearview Affiliate by issuing an electronic invoice in the dedicated Invoicing IT System (or such other method as “MY COMPANY” advises Freight Services Provider from time to time).
   2. Unless otherwise notified by “MY COMPANY” in writing, invoices must be issued a maximum of twice per month for all Charges related to all Services performed and all invoices shall be issued in and payable in Euros.
   3. Where required and unless otherwise instructed by “MY COMPANY”, all Charges, Additional Services Charges, including the amount of any claim made by Requester against the Freight Services Provider shall be converted by reference to the mid-point conversion rate on the website [www.oanda.com](http://www.oanda.com), such mid-point to be taken from the calendar day prior to the day in which the invoice is issued.
   4. Invoices must be an accurate and true reflection of the Charges (including Additional Services Charges) due under these Terms and Conditions. The Freight Services Provider shall reimburse to Requester any costs, losses, damages or expenses incurred in the event that invoices are not correctly constituted. Correctly constituted invoices shall be paid by the party responsible for payment on or before the first day after the end of the month in which falls the 90th day from receipt of invoice.
   5. The Freight Services Provider agrees on its behalf and on behalf of its Affiliates that the invoiced party shall be permitted to deduct from its invoices any sum owing from the Freight Services Provider or the Freight Services Provider’s Affiliate to “MY COMPANY” or any “MY COMPANY” Affiliate (whether such sum is owing pursuant to these Terms and Conditions or otherwise).
   6. If the Freight Services Provider fails to issue an invoice to “MY COMPANY” and or Requester for any sums due under or in connection with these Terms and Conditions within 12 (twelve) months of the date of performance of the activity to which the sums relate, the Freight Services Provider shall be deemed to have waived its right to payment for such activity.
   7. If a party fails to make any payment due or repay any amount paid when not due under these Terms and Conditions by the due date, then the defaulting party shall pay interest on the overdue amount at the rate of 4% per annum above the European Central Bank's base rate from time to time, except that where payments are disputed in good faith, interest is payable only after the dispute is resolved, on sums found or agreed to be due.
7. **TITLE AND CUSTODY**
   1. Title in the Products shall remain with “MY COMPANY” or the relevant “MY COMPANY” Affiliate at all times and nothing in these Terms and Conditions, the Transportation Order, or any other documents shall operate to transfer title in the Products to the Freight Services Provider.
   2. The Freight Services Provider irrevocably agrees not to exercise or seek to claim any form of lien or withholding over the Products.
8. **LIABILITY** 
   1. Subject to clause 7.3 and 12.2, each party’s liability to the other arising out of or in connection with:

(a) these Terms and Conditions;

(b) performance of these Terms and Conditions or any failure or delay in performance of these Terms and Conditions;

(c) termination of these Terms and Conditions;

(d) any breach of these Terms and Conditions; or

(e) the provision of any Services or the failure or delay in the provision of any Services;

shall be limited in accordance with the CMR Convention.

* 1. Nothing in these Terms and Conditions shall exclude or restrict a party’s liability (if any) for:

(a) any matter for which liability cannot be restricted or excluded at law; or

(b) any express indemnity given in these Terms and Conditions.

* 1. The Freight Services Provider shall be liable for and shall fully and promptly indemnify and keep fully and promptly indemnified “MY COMPANY” and “MY COMPANY” Affiliates against any and all Environmental Losses actually incurred or sustained by “MY COMPANY” or “MY COMPANY” Affiliates as a result of the loss of or damage to the Products which shall include any action taken by the Freight Services Provider that will or may weaken, damage or be detrimental to “MY COMPANY” or “MY COMPANY” Affiliates’ reputation.

1. **INSURANCE**
   1. The Freight Services Provider shall maintain the following insurance throughout the Term and for a period of two (2) years thereafter, such insurance to be with a reputable insurer covering all of the risks which may be incurred by the Freight Services Provider arising out of the acts or omissions of the Freight Services Provider and or its Employees in connection with these Terms and Conditions, including but not limited to:

(a) freight liability insurance to cover liability for the destruction or loss of or damage to the Products to their value (which shall be the price chargeable by the “MY COMPANY” Affiliate to its customer for such Products), during the Period of Care; and

(b) third party motor insurance and employer’s liability insurance in compliance with Good Industry Practice.

* 1. The Freight Services Provider shall maintain Errors and Omissions insurance throughout the Term and for a period of three (3) years thereafter, such insurance to be with a reputable insurer covering all of the risks which may be incurred by the Freight Services Provider arising out of the acts or omissions of the Freight Services Provider and or its Employees in connection with these Terms and Conditions.
  2. The Freight Services Provider shall produce to “MY COMPANY”, on request, copies of all insurance policies referred to in this clause 13 or other evidence confirming the existence and extent of the cover given by such policies.
  3. The Freight Services Provider shall notify “MY COMPANY” of any material changes to the level, type or other material provisions of the above-mentioned insurance policies.
  4. The Freight Services Provider shall not take or fail to take any reasonable action, or permit anything to occur in relation to it, which would entitle an insurer to refuse to pay any claim under the insured party’s policies required by this clause or cause any of the above-mentioned insurance policies to be invalidated or avoided.
  5. The Freight Services Provider shall give to “MY COMPANY” notification within thirty (30) days after any claim by it on any policy of insurance required by this clause 13, accompanied by full details of the incident giving rise to the claim.
  6. Where the Freight Services Provider engages any permitted subcontractor, the Freight Services Provider shall ensure that the relevant permitted subcontractor holds such insurance cover as is reasonable taking into account the extent of the Services to be provided by the permitted subcontractor.
  7. Neither the failure to comply nor full compliance with this clause 13 shall relieve the Freight Services Provider of its liabilities and obligations under these Terms and Conditions.

1. **TERMINATION**
   1. “MY COMPANY” may terminate these Terms and Conditions (without prejudice to its other rights and remedies) in whole or in part with immediate effect by written notice to the Freight Services Provider if the Freight Services Provider commits a material breach of any of its obligations under these Terms and Conditions which breach is irremediable or (if such breach is remediable), the Freight Services Provider fails to remedy that breach within a period of thirty (30) days of the date of a written notice from “MY COMPANY” specifying the breach and requiring it to be remedied.
   2. Either party may terminate these Terms and Conditions by written notice to the other party if:

(a) the other party goes into liquidation whether voluntary or compulsory or is dissolved or becomes insolvent or if a petition shall be presented or an order made for the appointment of an administrator or if a receiver, administrative receiver or manager shall be appointed over any part of its assets or undertaking which appointment is not dismissed within thirty (30) days of having been made, or

(b) any distress, execution, sequestration or other process is levied or enforced upon or sued out against the property of the other party which is not discharged within thirty (30) days, or

(c) the other is unable to pay its debts in the normal course of business.

* 1. “MY COMPANY” may terminate these Terms and Conditions if a majority percentage of the issued share capital, or control of the management or voting rights of the Freight Services Provider is taken over or acquired by any third party or parties or expropriated or nationalised.
  2. “MY COMPANY” may terminate these Terms and Conditions or remove Routes from the Contract Particulars immediately on written notice if the Freight Services Provider fails to meet any Key Performance Indicator as set out in Schedule 2:

(a) in any two (2) consecutive calendar months; or

(b) in any three (3) non-consecutive months in any period of twelve consecutive months.

* 1. The termination of these Terms and Conditions howsoever arising is without prejudice to the rights, duties and liabilities of all parties accrued prior to termination or any provision of these Terms and Conditions, which contemplates or is capable of post-termination operation. The clauses in these Terms and Conditions which expressly or impliedly have effect after termination shall continue to be enforceable notwithstanding termination, which shall include, without limitation, clauses 4, 5, 7, 8, 9, 10, 11, 12, 13, 15, 16, 19, 20, 21, 22 and 23.

1. **CONSEQUENCES OF TERMINATION** 
   1. On termination of these Terms and Conditions, the Freight Services Provider shall ensure the completion of all Transportation Orders and each party liable for charges as determined by clause 4.2 shall be liable to pay the Charges outstanding for Transportation Orders performed.
   2. During the period between service of notice to terminate these Terms and Conditions and the effective termination date the Freight Services Provider shall continue to provide the Services and further provide to “MY COMPANY” at no additional cost such reasonable assistance as “MY COMPANY” shall reasonably require in connection with the transfer of the Services to “MY COMPANY” or to a new service provider to “MY COMPANY”.
   3. On termination of these Terms and Conditions at any time and for any reason, the Freight Services Provider shall indemnify and keep indemnified “MY COMPANY” and its Affiliates and any person appointed by “MY COMPANY” to perform the Services in place of (whether in whole or part) the Freight Services Provider (“Successor Freight Services Provider”) against any claim, demand, liability or loss which may be incurred and any costs and expenses which may be reasonably and properly incurred (including reasonable legal and professional expenses) in relation to or as a result of the application of the Transfer of Undertakings (Protection of Employment) Regulations 2006 or any similar legislation (“Transfer Regulations”) (or as a result of an allegation that the Transfer Regulations applies) (including but not limited to any liability, loss, cost and expense as aforesaid arising out of or in connection with “MY COMPANY” or a Successor Freight Services Provider refusing to employ, not honouring the terms or conditions of employment of, or dismissing any employee or ex-employee of the Freight Services Provider who alleges he or she has or who has a contract of employment with “MY COMPANY”, an “MY COMPANY” Affiliate or the Successor Freight Services Provider by reason of the operation of the Transfer Regulations). The provisions of this clause 15 shall survive termination of these Terms and Conditions.
2. **CONFIDENTIALITY**
   1. Except as expressly set out in these Terms and Conditions, no party may use or disclose any of the other party’s Confidential Information. The parties agree that this clause 16 shall survive termination or expiry of these Terms and Conditions, that damages are not an adequate remedy for its breach, and that at the end of the Term they shall cease using all Confidential Information of the other party and return or destroy (at the option of the other party) all Confidential Information (including any copies thereof) in its possession or control that has been recorded in tangible form.
   2. A party ("Receiving Party") may disclose the Confidential Information of the other party only:

(a) when required to do so by law or by any regulatory authority, provided that prior to such disclosure it shall provide such opportunity as is possible in the circumstances for the other party to object to such disclosure and shall provide reasonable assistance to the other party in seeking to prevent or limit such disclosure; and

(b) to any person whose duties require such disclosure, on condition that the Receiving Party ensures that each of the person(s) to whom such disclosure is made is/are informed of the obligations of confidentiality under these Terms and Conditions and comply with those obligations as if they were bound by them and that if required by the other party that such person(s) enter into direct undertakings with the other party.

* 1. The restrictions contained in this clause 16 shall not apply to any information:

(a) that is in the public domain without breach of these Terms and Conditions;

(b) which, when disclosed, was already known to the Receiving Party without restriction;

(c) that the other party develops independently of any information and material that is disclosed to it in connection with these Terms and Conditions; or

(d) which is subsequently disclosed to the Receiving Party by a third party at liberty to disclose it.

* 1. Ownership of all intellectual property rights arising in respect of a party’s Confidential Information shall be the exclusive property of that party (or its licensors) and the Receiving Party shall not acquire title to or any interest in it except to the extent that the Receiving Party needs to use that Confidential Information in order to perform its obligations under these Terms and Conditions.
  2. The Freight Services Provider agrees that it will not make any announcement to the public or any third party in connection with these Terms and Conditions without first obtaining the written consent of “MY COMPANY” including “MY COMPANY”’s approval on the text and method of such announcement (save as required by law or the regulations of the London Stock Exchange Limited, or as are required to perform the parties’ obligations under these Terms and Conditions).
  3. Nothing in this clause 16 shall supersede, vary or otherwise amend any existing confidentiality agreement between the parties.

1. **FORCE MAJEURE**
   1. If either party is prevented or delayed in the performance of any of its obligations under these Terms and Conditions as a result of any event whatsoever beyond the reasonable control of a party that has not occurred as a result of its negligence or other act or omission and which was not reasonably foreseeable which may include, as the case may be, civil commotion, embargo, governmental legislation or regulation, riot, invasion, war, threat of or preparation for war, fire, explosion, flood, earthquake, subsidence, epidemic or other natural physical disaster (“Force Majeure Event”), it shall notify the other party, in writing, of the same as soon as practicable, fully detailing the background to, and all relevant matters connected with, such Force Majeure Event, together with such evidence thereof that it reasonably can give and specifying the period for which such prevention or delay can reasonably be expected to continue. The affected party shall use its reasonable endeavours to remove or overcome such Force Majeure Event as quickly as possible and shall also use its reasonable endeavours to mitigate the impact of such Force Majeure Event of the other party. Subject to clause 17.2, if a party shall have fully complied with its obligations under this clause 17.1, it shall be excused from performance of its unfulfilled obligations under these Terms and Conditions from the date of such notice until such Force Majeure Event no longer pertains.
   2. If a Force Majeure Event prevents performance by a party of any obligations hereunder for a continuous period in excess of eight (8) weeks, the other party shall be entitled to terminate these Terms and Conditions by written notice at any time after such eight (8) week period provided the relevant Force Majeure Event remains subsisting at the time such notice is given.
   3. For the avoidance of doubt, neither a change in economic nor market conditions is a Force Majeure Event.
2. **SUB-CONTRACTING AND USE OF RESOURCES** 
   1. Where the Freight Services Provider sub-contracts the performance of any of its obligations to a third party (Sub-Contractors), the Freight Services Provider shall maintain accurate and complete records of all Sub-Contractors and the work that they carry out on its behalf. Such records shall be made available to “MY COMPANY” promptly upon request. The Freight Services Provider shall remain jointly and severally liable for the acts and omissions of its Sub-Contractors, as well as the provision of the Services.
3. **EMPLOYMENT**
   1. The Employees are or will be employed by the Freight Services Provider and the Freight Services Provider shall continue to have liability for all its Employees in accordance with all laws, regulations and rules relating to the employment of persons. No contract of employment between “MY COMPANY” or any “MY COMPANY” Affiliate and any Employee shall be made as a result of these Terms and Conditions or the performance of the Services.
4. **DISPUTES**
   1. Prior to the beginning of any legal proceedings the parties shall attempt in good faith to resolve any dispute by way of negotiation between senior executives of the parties who have authority to settle such dispute. Any dispute arising out of or in connection with these Terms and Conditions shall be ultimately referred to arbitration in London in accordance with the English Arbitration Act 1996 or any statutory modification or re-enactment thereof save to the extent necessary to give effect to the provisions of this clause.
   2. The arbitration shall be conducted in accordance with the Arbitration Rules of the London Court of International Arbitration (“LCIA Rules”) for the time being in force, which rules are deemed to be incorporated by reference in this clause. Proceedings will be heard by a single arbitrator and held in London in English.
   3. The costs of the arbitration shall be fixed by the arbitral tribunal and shall be borne by the unsuccessful party, unless the arbitral tribunal, in its discretion, determines a different apportionment, taking all relevant circumstances into account. The costs of arbitration include: (i) the fees and disbursements of the arbitrator, (ii) the reasonable fees, travel and other expenses of expert witnesses, and (iii) the costs of legal representation and assistance, to the extent that the arbitral tribunal determines that the amount of such costs is reasonable.
   4. The arbitral tribunal shall endeavor to issue its award within sixty (60) days of the last hearing of the substantive issues in dispute between the parties; however, the arbitral tribunal shall not lose jurisdiction if it fails to respect this timescale. The arbitral award shall be final and binding.
   5. Neither the parties (including their auditors and insurers) nor their counsel and any person necessary to the conduct of the arbitration nor the arbitrators shall disclose the existence, content, (including submissions and any evidence documents presented or exchanged), or results of any arbitration hereunder without the prior written consent of the parties, except as required by law or the applicable rules of a stock exchange.
   6. Clauses 20.1 to 20.5 shall not apply in the event that “MY COMPANY” or “MY COMPANY” Affiliates seek (in any court or tribunal in any jurisdiction) emergency or interim injunctive, equitable or other special relief, in connection with either Confidential Information or the Products, that they consider to be appropriate in order to protect “MY COMPANY”’s or “MY COMPANY”’s Affiliates business interests.
5. **ASSIGNMENT**
   1. These Terms and Conditions are personal to the Freight Services Provider which shall not assign, novate or otherwise part with any of its rights or obligations under these Terms and Conditions. Any purported or attempted assignment or novation by the Freight Services Provider without “MY COMPANY”’s prior written consent or transfer by operation of law shall give “MY COMPANY” the right to terminate these Terms and Conditions immediately on written notice. The benefit subject to the obligations of these Terms and Conditions shall be assignable by “MY COMPANY” to any Affiliate of “MY COMPANY” or to the purchaser of all or a substantial part of the business of “MY COMPANY” (or any other Affiliate of “MY COMPANY”) and in the event of such assignment, “MY COMPANY” shall, with effect from such assignment, be released from its obligations hereunder and all references in these Terms and Conditions to “MY COMPANY” shall be deemed to include its assigns.
6. **CORPORATE RESPONSIBILITY**
   1. For the purpose of this clause 22, ““MY COMPANY”’s Corporate Standards” means all policies and reports available at [http://www.”My Company”.com/Our-responsibility/Our-policies-reports](http://www.rb.com/Our-responsibility/Our-policies-reports) and associated laws and regulations, as may be amended from time to time, including but not limited to:

(a) “My Company”’s Code of Conduct.

(b) “My Company”’s Anti-Bribery Policy and the UK Bribery Act 2010.

(c) “My Company”'s Policy on Human Rights and Responsible Business.

* 1. In performance of these Terms and Conditions, the Freight Services Provider shall comply with “MY COMPANY”’s Corporate Standards. The Freight Services Provider has and shall maintain in place throughout the term of these Terms and Conditions its own policies and procedures to ensure compliance with “MY COMPANY”’s Corporate Standards and shall appropriately enforce those policies and procedures. The Freight Services Provider shall ensure that any person associated with the Freight Services Provider who is performing activities in connection with these Terms and Conditions are required to abide by terms equivalent to those agreed to by the Freight Services Provider in this clause.
  2. The Freight Services Provider shall promptly report to “MY COMPANY” and its Affiliates any violation of the requirements of this clause 22, or any request by any person that the Freight Services Provider performs an act that would be a violation of those requirements. The Freight Services Provider shall provide to “MY COMPANY” and its Affiliates promptly and at no extra charge, information on and evidence of the Freight Services Provider’s compliance with this clause 22 as requested. The Freight Services Provider shall undertake independent audits, by a Competent Third Party Auditor, and accommodate site visits by “MY COMPANY” representatives, or their Affiliates, to verify compliance with this clause 22, if requested. “Competent Third-Party Auditor” means a third-party auditor who meets the requirements of the Global Social Compliance Programme Reference Tool for Auditing Competence.
  3. Breach of this clause 22 shall be deemed a material breach of these Terms and Conditions, allowing “MY COMPANY” to terminate these Terms and Conditions and (notwithstanding clause 15.1) any Transportation Order by immediate written notice without any liability from “MY COMPANY” or its Affiliates to the Freight Services Provider or its Affiliates.

1. **GENERAL**
   1. These Terms and Conditions and any Transportation Order sets out the entire agreement between the parties with respect to the subject matter covered by it and supersedes and replaces all prior communications, drafts, agreements, representations, warranties, stipulations, undertakings and agreements of whatsoever nature, whether oral or written, between the parties relating to the performance of the Services. The Freight Services Provider that is set out in the Contract Particulars shall be jointly and severally liable for any failure by a Freight Services Provider (or its Sub-Contractors) under a Transportation Order.
   2. Any Affiliate of “MY COMPANY” may place Transportation Orders or have an interest in Routes under these Terms and Conditions as the Requester or the consignee and may accordingly in their own right enforce the provisions of these Terms and Conditions in respect of that Transportation Order or those Routes only as though it were “MY COMPANY” pursuant to the Contracts (Rights of Third Parties) Act 1999 provided that each Affiliate of “MY COMPANY” that places a Transportation Order shall by doing so be deemed to have assumed “MY COMPANY”’s obligations under these Terms and Conditions (but solely in respect of that Transportation Order). Except in accordance with the previous sentence, any person or body who is not a party to these Terms and Conditions has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of the terms set out in these Terms and Conditions. The Freight Services Provider and “MY COMPANY” may vary or rescind these Terms and Conditions without the consent of any Affiliates, who will have no rights in that respect.
   3. “MY COMPANY” may nominate to the Freight Services Provider in writing third parties who may wish to place Transportation Orders for the Services with the Freight Services Provider (the “Third Party Requesters”). Freight Services Provider shall accept Transportation Orders and supply Services to the Third-Party Requesters provided that the Third-Party Requesters will use those Services for delivery of goods to “MY COMPANY” or “MY COMPANY”’s Affiliates. Services shall be supplied by Freight Services Provider to the Third-Party Requesters on equivalent terms to those set out in these Terms and Conditions. Obligations of the Requester under a Third-Party Requester Transportation Order shall be several obligations of the Third Party Requester. “MY COMPANY” shall have no liability to Freight Services Provider for any failure by Third Party Requester to perform its obligations under a Third-Party Requester Transportation Order. Freight Services Provider acknowledges that failure to perform a Third-Party Requester Transportation Order in accordance with its terms may cause loss or damage to “MY COMPANY” or “MY COMPANY”’s Affiliates. The commercial terms of these Terms and Conditions may be disclosed by “MY COMPANY” to Third Party Requester unless the parties agree in writing to the contrary. Nothing under or in relation to this clause creates or shall be deemed to create any relationship of agency or partnership between “MY COMPANY” and any Third-Party Requester.
   4. The Freight Services Provider acknowledges that in agreeing to these Terms and Conditions it is not relying upon any representation, warranty, promise or assurance made or given by “MY COMPANY” or any of its Affiliates or any other person, whether or not in writing, at any time prior to the acceptance of these Terms and Conditions. Nothing in this clause shall operate to limit or exclude any liability for fraud.
   5. In the event of any conflict between the main body of these Terms and Conditions and the Schedules, the former shall take precedence to the extent of such conflict. In the event of any conflict between these Terms and Conditions and the CMR Convention and or the Hague-Visby Rules the following order of precedence shall apply in interpreting these Terms and Conditions and resolving any and all such conflicts:

(a) these Terms and Conditions save that for matters relating to limitation of liability for Products transported on the road the CMR Convention shall prevail,

(b) the Hague Visby Rules provided the conflict relates to the Products or Services whilst the Products were being transported on water; and

(c) the CMR Convention provided the conflict relates to the Products or Services whilst the Products were being transported on land.

* 1. Save where the Contract Particulars is updated in accordance with these Terms and Conditions, no variation to these Terms and Conditions shall be effective unless in writing and signed by duly authorised representatives of each of the parties.
  2. The Freight Services Provider must immediately notify “MY COMPANY” and its Affiliates if any communication is required with a Governmental Authority or other relevant authorities.
  3. If any clause or part of these Terms and Conditions is found by any court, tribunal, administrative body or authority of competent jurisdiction to be illegal, invalid or unenforceable then that provision will, to the extent required, be severed from these Terms and Conditions and will be ineffective without, as far as is possible, modifying any other clause or part of these Terms and Conditions and this will not affect any other provision of these Terms and Conditions which will remain in full force and effect.
  4. The forbearance, failure or delay by any party in exercising any right, power or remedy of that party under these Terms and Conditions shall not in any circumstances impair such right, power or remedy nor operate as a waiver of it. The single or partial exercise by any party of any right, power or remedy under these Terms and Conditions shall not in any circumstances preclude any other or further exercise of such right, power or remedy or the exercise of any other right, power or remedy. Any waiver of a breach of, or default under, any of the terms of these Terms and Conditions shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of these Terms and Conditions.
  5. At all times in connection with these Terms and Conditions the parties shall be independent contractors and nothing in these Terms and Conditions shall create a relationship of agency, partnership or joint venture as between the parties and accordingly, save as otherwise expressly permitted by these Terms and Conditions or any power of attorney issued, the Freight Services Provider shall have no authority to bind “MY COMPANY” or “MY COMPANY” Affiliates nor shall it hold itself out to third parties as having authority to enter into or incur any commitments, expenses, liabilities or obligations of any nature on behalf of “MY COMPANY” or “MY COMPANY” Affiliates.
  6. Any notice to be given under these Terms and Conditions shall be given in writing and shall be duly served hereunder if sent by registered mail or international courier with written proof of delivery to either party’s registered address.
  7. These Terms and Conditions may be executed in one or more counterparts, all of which shall be considered as one and the same agreement and shall become effective when one or more counterparts have been signed by each of the parties.
  8. These Terms and Conditions shall be governed by and construed in accordance with English law.

# **SCHEDULE 1 Contract Particulars**

|  |  |
| --- | --- |
| “MY COMPANY” business involved |  |
| Location Name |  |
| From Town |  |
| From Country |  |
| To Town |  |
| To Country |  |
| Estimated VOLUME 2018 (tender) |  |
| Freight Services Provider 2018 |  |
| Final price 2018 (EUR) |  |
| Currency |  |
| Transit in % in EU |  |
| Transit in % in Russia/Ukraine |  |
| Cost in € in EU |  |
| Cost in € in Russia/Ukraine |  |
| Share in the lane 2018 |  |
| Weekly capacity (in trucks) |  |
| Daily capacity (in trucks) |  |
| Payment terms |  |
| Invoice frequency |  |
| Contract validity |  |
| Equipment type |  |
| Intermodal (Y/N) |  |
| IF INTERMODAL - pls put train/vessel frequency (daily, Mon/Thu) |  |
| IF INTERMODAL - pls put cut off |  |
| # of stands included in rate |  |
| Max payload (in ton) |  |
| Lead time (hours) |  |
| Express surcharge (EUR) |  |
| Express transit time (hours) |  |
| Frigo Surcharge (EUR) |  |
| ADR Surcharge (EUR) |  |
| Co-loading/Co-unloading Surcharges (EUR) |  |
| Additional Surcharges (EUR) |  |
| Loading time included |  |
| Unloading time included |  |
| TMS ID |  |
| Operational contact person Freight Services Provider |  |
| Operational contact Freight Services Provider phone |  |
| Operational contact Freight Services Provider e-mail |  |
| Procurement Ref. : company details (Company name + city) |  |
| Billing contact person |  |
| Billing contact phone |  |
| Billing contact e-mail |  |
| Contact person “MY COMPANY” factory |  |
| Email address |  |
| Telephone number |  |
| Product category (medical/other) |  |
| Technical Agreement (Y/N) |  |
| Payer |  |
| For shipments to and from Russia/Ukraine: | The parties agree that specified, agreed routes (“**Split-Customer Routes**”) may be apportioned as between “MY COMPANY” and “MY COMPANY”’s Affiliates. Notwithstanding that the Split-Customer Routes may be ordered as one single Transportation Order or two Transportation Orders, the Split-Customer Routes will be treated as one route from the Collection Point to the Delivery Point in respect of the Freight Services Provider’s Period of Care. For Split-Customer Routes “MY COMPANY” shall only be responsible for payment for the Services provided from the initial collection point to a designated destination point (“**Interim Point**”), as set out in the Transportation Order or as otherwise notified by “MY COMPANY” (the “**First Leg**”). The payment for the Services for the portion of the Split-Customer Route from the Interim Point to the Collection Point (the “**Second Leg**”) shall be the responsibility of a nominated Affiliate of “MY COMPANY”. Notwithstanding that the TMS Website may show one or more Interim Points, the Freight Services Provider’s Period of Care runs from the commencement of the First Leg to the completion of the Second Leg inclusive. “MY COMPANY” shall not be responsible for any obligations with respect to the Second Leg. The Freight Services Provider shall remain, at all times, jointly and severally liable with any Freight Services Provider Affiliate or Freight Services Provider subcontractor for the performance of the relevant Transportation Order during the entire Split-Customer Route.  The Freight Services Provider shall procure that separate invoices for the Services will be issued for the Split-Customer Routes as follows:  (a) Invoices in respect of the First Leg shall be issued to “MY COMPANY” (“My Company”); and  (b) Invoices in respect of the Second Leg shall be issued to the nominated Affiliate of “MY COMPANY” set out in the Transportation Order. |
| For shipments to and from Turkey | The Freight Services Provider must act in a manner not to allow for and to prevent illicit trade and corruption. In this context, the Freight Services Provider accepts to comply with all obligations as follows:   1. If “MY COMPANY” or Requester suspects that the Freight Services Provider or its shareholders or managers (i) obtain revenues from activities involving an element of crime, (ii) assist terrorist activities in financial terms or otherwise, (iii) have a connection with any terrorist organization, or (iv) would ship “MY COMPANY” Products in a way violating the applicable commercial embargos, sanctions or other export inspections, it shall provide information pertaining to the aforementioned suspicion to the Freight Services Provider, and may cease supply of Products to the Freight Services Provider until these suspicions are cleared. “MY COMPANY” and or Requester may assume the distribution and sales of the Products by itself or may also assign these to a third party within this period. On the other hand, the Freight Services Provider shall also cease delivery of Products to its employees, business partners and subcontractors, who, it suspects, (i) obtain revenues from activities involving an element of crime, (ii) assist terrorist activities in financial terms or otherwise, (iii) have a connection with any terrorist organization, or (iv) would ship “MY COMPANY” Products in a way violating the applicable commercial embargos, sanctions or other export inspections. In case these suspicions turn out to be true, it shall lead to termination of the Terms and Conditions for the Freight Services Provider, termination of the relevant service contract for its employees, business partners and subcontractors and no deliveries to be made to such persons again in the future. 2. The Freight Services Provider accepts and undertakes: 3. that all “MY COMPANY” Products transported and or stored by the Freight Services Provider shall be shipped and/or stored by the Freight Services Provider or by persons acting under its instructions in accordance with the Applicable Laws, 4. that all potential hiding places in the transport vehicles (cab, over the wheels, inside the upholstery, behind the headlights) shall be regularly checked by the officials in the vehicle; the vehicles shall definitely be kept in predetermined and secured holding areas; entries and exits to these areas shall be regularly monitored; unauthorized intervention or goods receipt other than shipments shall be recorded and communicated to Requester immediately; vehicles parked outside of Requester facilities shall definitely be inspected against access of unauthorized persons and goods (openings, repair marks, etc. that may enable such) before each loading; in case an accommodation is to take place on the route, vehicle officials shall check the vehicle before departure at each location where they leave the vehicle, and they shall urgently communicate any incidents that have occurred to the Freight Services Provider, and the Freight Services Provider shall communicate these to Requester; the drivers shall take all necessary precautions for the safety of the Products and transport vehicle (procedures pertaining to keys, parking place, privacy, stopovers, etc.) during transport of products and accommodation on the route; accidents, emergencies and non-conformities shall be immediately reported; and the Freight Services Provider shall regularly give training to its officials concerning the issues listed herein, 5. that Requester shall have the right to reduce, change or limit the volume of shipment and/or product range delivered to the Freight Services Provider or to cease product delivery to the Freight Services Provider in case “MY COMPANY” and or Requester believes that the Freight Services Provider fails unreasonably to minimize the risk of “MY COMPANY” Products to be directed to illicit trade channels and sold in this manner, and although “MY COMPANY” or Requester communicates its concerns regarding this issue to the Freight Services Provider, believes that these concerns have not been eliminated within six months; 6. that “MY COMPANY” shall have the right to warn the Service Provider and request it to take measures to stop the illicit activity and to prevent its re-occurrence in case “MY COMPANY” encounters the products delivered to the Service Provider in illicit channels, and that “MY COMPANY” may terminate the Contract without paying any compensation in case the products delivered to the Service Provider are found again in illicit channels within the same calendar year and in case it is found out that the Service Provider also carries counterfeit products or unlabeled products which have not been supplied by “MY COMPANY” together with “MY COMPANY” products. 7. The Freight Services Provider shall not directly or indirectly change, remove or falsify any identifying marks put by “MY COMPANY” or Requester on the Products or the packs, cartons or parcels containing the Products, excluding cases where the identifiers on the parcels containing “MY COMPANY” Products which have previously been approved by “MY COMPANY” or Requester must be distorted. The Freight Services Provider accepts that “MY COMPANY” and or Requester shall not deliver Products to the Freight Services Provider in case the designated party to whom the Products will be shipped and/or delivered does not match on the invoices/shipping documents. |

# **SCHEDULE 2: Key Performance Indicators (KPIs)**

The requested KPI’s are:

* + Collection on time (within agreed time window)
    - Min 95%
    - Express loads 100%
  + Delivery on time (within agreed time window)
    - Standard loads Min 97%
    - Express loads Min 99%
  + In transit Damages & Shortages (total No. of DDN’s as % of no. of loads)
    - Max 2%

# **SCHEDULE 3: Operational Guidelines**

# 

**OPERATIONAL INSTRUCTION FOR FREIGHT SERVICES PROVIDERS**

**I. Operational instruction for shipments to Turkey.**

1. **Unloading point changes**

“My Company” Turkey reserves the right to make change in the off-loading addresses within the 40km area of the above-mentioned addresses. Haulier agrees to accept the off-loading address changes within 40km area range.

1. **Receipt of Damaged Product**

The received load is within the responsibility of the transporter from the loading site to the unloading site. When the transporter receives the load intact from respective plants, it must take all precautions to deliver it intact.

The damage detected in customs and the place of unloading shall be entered in CMR and it shall be reported to you within the damage determination report. The cost of damage shall be invoiced to the supplier within the same week.

1. **Arrival of the Vehicle, Registration procedures, Clearance and Unloading**

After the arrival of the vehicle at the respective customs, its registration procedures are completed, and all of its documents are delivered to the customs agency.

Documents that must come with the vehicle and be delivered to customs are invoice of the good, ATR, CMR, bill of lading, packing list and TIR carnet.

The supplier is responsible for the control of all respective customs documents in the origin. In case any documents are missing or mistaken any extra expense that might arise as a result will be due to be charged to the supplier.

After the statement procedures are completed, it will be directed to the respective warehouse or free warehouse.

The vehicle must be shipped to the respective warehouse after the import procedures are completed. Drug products are delivered to the warehouse XXX. Hygiene products are delivered to our free warehouse in YYY. “My Company” may change the place of delivery by informing the supplier company, and the incoming raw materials shall be delivered to our ZZZ plant.

ATR is prepared by factory side for the loadings from Poland, France, Italy, England, Hungary...-sites but exit customs process is under hauliers’ responsibility.

There is no need CoO (Certificate of Origin) for the customs clearance that is done at Halkalı customs.But CoO is needed for the clearance at Customs.CoO is prepared by factorsy side except loading from England sites. It is unders hauliers’ responsibility

**II. Safety and quality requirements.**

**Please read the following information and ensure you fully understand, and your truck meets our requirements.**

1. Personal Protective Equipment (PPE), drivers are required to have the following PPE:
   * Hi-visibility jacket or waistcoat.
   * Safety footwear, e.g.: steel toe capped boots

All drivers need to report to Security/Dispatch office and goods in with the proper loading reference (TMS’s tour number, or reference provided by Dispatch Administrator).

1. Trailer / Swap body / Container condition Before loading, drivers must ensure that vehicle is:
   * Dry
   * Clean, free from previous loads
   * Odorless
   * Acceptable for the transport of consumer products
   * Free from damages (examples of unacceptable condition Fig 1-3):
     + The floor, walls, roof must be free from holes and cracks.
     + The side curtain must be intact.
     + There are no visible nails or other protruding objects that could harm the cargo.







Fig. 1 Broken floor Fig. 2 Ripped curtain Fig. 3 Nail in the floor

1. Load Securing Equipment:

Equipped with at least 6 belts, crossbars on the sides (side bards) and 3 cargo bars protecting the cargo. Please find examples of properly equipped trailers and properly secured cargo (Fig 4-7)

* + There is a requirement to use safety belts/bars at least in 3 sections (preferably 2 belts/bars per section) - a total of 2x3 belts/bars at least.

A diagram of a load

Description automatically generated

Fig. 4. Load security schema.

A truck with stacks of boxes

Description automatically generated with medium confidence

The back of a truck with a cargo van

Description automatically generated with medium confidence

Fig. 5 How to secure pallets after each section.

* + Last pallets need to be secured as well if space between them and trailer doors (preferably safety metal bars - if not belts and corner protectors as well, **except for site XXX where it’s not allowed to save with belts**).
  + Tilt trailer must be equipped with at least with 3 sidebars to assure proper stability of loads during transportation.

Long shot of a long hallway

Description automatically generated

Fig. 6 Correctly equipped trailer – side bars

A long shot of a truck

Description automatically generated

Fig. 7 Correctly equipped trailer – site bards & straps

## Trailers will be inspected upon arriving and refused if required conditions are not met.

Drivers must ensure that the load is correctly secured (straps / bars), so it will not move or fall off when breaking, accelerating, or changing direction.

In the case of loadings with 34 pallet places securing of the load will be determined individually.

## All trailers that are dispatched from “MY COMPANY” factories must be equipped with a rope to seal the trailer before leaving. The seal will be given by “MY COMPANY” site at the end of loading.

The Freight Services Provider shall be liable for the total or partial loss of the Products and for damage thereto occurring between the time when the Freight Services Provider takes over the Products and the time of delivery, as well as for any delay in delivery.

If the driver didn't protect the Products properly the receiving market will claim by raising a DDN to the Freight Services Provider.

# **SCHEDULE 4: Fuel Price Mechanism**

The Considered Fuel Price for 28 countries in the European Union for 2018, is the weighted average diesel price (including taxes), as published weekly by the EU at <http://ec.europa.eu/energy/observatory/oil/bulletin_en.htm>.

% of Fuel Surcharge/Reduction for calendar quarter (N+1) is based on Average Gasoline Price for calendar quarter (N) compared to Baseline Fuel Price according to values detailed in below table.

The Baseline Fuel Price for 2018, is set at €1230/ 1000L of automotive diesel.

The Fuel Price Mechanism is neutral when the price of oil is +/- 5% of the Baseline Fuel Price.

“MY COMPANY” will inform all allocated carriers at the beginning of each quarter via e-mail what will be the Fuel Surcharge/Reduction to be applied.

For example:

* if the Considered Fuel Price in Q1 2018, was €1300, a Surcharge of 1,0% on the baseline price is applicable for services provided in Q2 2018
* if the Considered Fuel Price in Q1 2018, was €1130, a Reduction of -1.0% on the baseline price is applicable for services provided in Q2 2018
* if the Considered Fuel Price in Q1 2018, was €1235, no Surcharge or Reduction is applicable, and the carriers should invoice at the baseline price for services provided in Q2 2018

No other Fuel Clause will be accepted by “MY COMPANY” during the Term.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  |  |  |  | **Surcharge / Reduction** |
| INDEX 2018 | At least | But less than | Increase Interval | Impact Road |
| **Reduction** | 854 | 899 | 5% | -6,0% |
|  | 900 | 947 | 5% | -5,0% |
|  | 948 | 998 | 5% | -4,0% |
|  | 999 | 1052 | 5% | -3,0% |
|  | 1053 | 1108 | 5% | -2,0% |
|  | 1109 | 1168 | 5% | -1,0% |
| **Neutral** | 1169 | **1230** | **5%** | 0,0% |
| **Neutral** | **1230** | 1292 | 5% | 0,0% |
| **Surcharge** | 1293 | 1357 | 5% | 1,0% |
|  | 1358 | 1426 | 5% | 2,0% |
|  | 1427 | 1498 | 5% | 3,0% |
|  | 1499 | 1574 | 5% | 4,0% |
|  | 1575 | 1654 | 5% | 5,0% |
|  | 1655 | 1738 | 5% | 6,0% |

**Annex 3 – Technical Agreement**