

JOHN BRINDLEY LIMITED AND JOHN BRINDLEY COMMERCIALS LIMITED

TERMS AND CONDITIONS

These terms and conditions (“**Conditions**”) apply to the Services provided by John Brindley Limited, a limited company registered in England and Wales (company number 330603) whose registered office is at The Close, Sharnford, Hinckley, Leicestershire, LE10 3PA and by John Brindley Commercials Limited, a limited company registered in England and Wales (company number 259769) whose registered office is at The Close, Sharnford, Hinckley, Leicestershire, LE10 3PA (together referred to as “**John Brindley**” or “**we**” or “**us**”) to the Customer.

These Conditions apply to all Services we provide. Please read these Conditions carefully before purchasing. If there is any conflict between these Conditions and any specific terms included in your Order Confirmation, then the Order Confirmation shall apply.

If you do not agree to these Conditions you must cease to continue to order any Services from us. Ordering any of our Services, will be deemed as conclusive acceptance of these Conditions. You shall be referred to these Conditions during the Order process and if you request our Services by Telephone Order, you shall be directly referred to these Conditions.

By instructing us to proceed with the Services you will be deemed to have accepted these Conditions.

1.1 Definitions

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

Charges: means the charges payable by the Customer for the Services provided by John Brindley.

CMR: means the Convention for the International Carriage of Goods by Road signed at Geneva on 19 May 1956

Conditions: means the terms and conditions set out in this document as amended from time to time in accordance with clause 18.

Consignment: means a consignment of the Goods identified in the Customer’s Order Confirmation pursuant to Clause 2.5.

Contract: means the contract between John Brindley and the Customer for the supply of the Services in accordance with the Order Confirmation, the Standard Storage Terms, the Standard Transport Terms and these Conditions.

Credit Account: means a credit account held by the Customer with John Brindley.

Customer: means the person or firm who orders the Services from John Brindley.

Customer Equipment: means any equipment, systems, or facilities provided by the Customer and used directly or indirectly in the supply of the Services.

Dangerous Goods: means

(a) those substances and articles the carriage of which is prohibited by the provisions of the European Agreement Concerning the International Carriage of Dangerous Goods by Road (**ADR**) as applied in the United Kingdom or authorised only under the conditions prescribed in accordance therewith;

(b) any weapons, drugs, poison, damaging articles or substance or any article or substance likely to encourage vermin or other pests or likely to cause infection;

(c) any Goods which, although not included in (a) and (b) above, in the sole opinion of John Brindley present a similar hazard (including but not limited to: chemicals, any substance which is hazardous, corrosive or inflammable, oil-based paints, thinners, white spirit, fuels (including but not limited to gas cylinders, petrol, diesel, or oil except for fuel inside locked fuel tanks on vehicles, machines, plant or machinery), and explosives (including but not limited to firearms, bullets or other ammunition, cartridges and detonators)).

Data Protection Legislation: means the UK Data Protection Legislation and (for so long as and to the extent that the law of the European Union has legal effect in the UK) the General Data Protection Regulation ((EU) 2016/679) and any other directly applicable European Union regulation relating to privacy.

Delivery Location: has the meaning given in clause 6.2.

Delivery Surcharge(s): means any additional charge(s) for a timed Consignment delivery or collection, as advised by John Brindley to the Customer.

Distribution Services: means carriage of the Goods by land and sea by John Brindley.

DVSA: means Driver and Vehicle Standards Agency.

Effective Time: means the time at which the employment of any person (or liabilities relating to that person) are transferred to John Brindley under TUPE

Employee: means a person employed or previously employed by the Transferor and who is, or whose rights are, affected by the TUPE Transfer

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, including without limitation imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent;
- (f) collapse of buildings, fire, explosion or accident;

- (g) any labour or trade dispute, strikes, industrial action or lockouts (other than in each case by the party seeking to rely on this clause, or companies in the same group as that party);
- (h) non-performance by suppliers or subcontractors (other than by companies in the same group as the party seeking to rely on this clause); and
- (i) interruption or failure of utility service.

Goods: means the goods and any part thereof to which the Contract relates.

Hire Goods: means any goods or machinery which is hired by John Brindley to the Customer.

Hire Period: means the period commencing when the Customer holds the Hire Goods on hire (including Saturdays Sundays Bank Holidays and any periods of closure for festive occasions) and ending upon the agreed end date as indicated by the Contract or the happening of any of the following events (whichever is the later): (i) the physical return of the Hire Goods by the Customer into John Brindley's possession; or (ii) the physical repossession or collection of Hire Goods by John Brindley.

Hire Vehicle: means any vehicle which is hired to the Customer by John Brindley.

Inward TUPE Transfer: means a situation where John Brindley is (or is expected to be) a transferee for the purposes of TUPE as a result of providing services to or for the benefit of the Customer (or intending to do so)

Limit: means a limit per tonne gross weight of that part of the Goods in respect of which a claim arises.

Tariff: means the set Charges for all Services made known to a particular Customer.

Losses: means any losses, claims, judgements, costs (including costs of enforcement and reasonable and properly incurred legal costs), damages, awards, charges, demands, customs duties taxes, proceedings, penalties, fines, expenses and/or any other liabilities incurred or sustained (including, in the case of John Brindley, loss of or any detrimental variation to its Operator's Licence).

Maintenance Services: means preventative maintenance inspections, MOT preparation and ad hoc maintenance or repair work by John Brindley.

Operator's Licence: means John Brindley's Ltd goods vehicle operator's licence with licence number OF0203161 and John Brindley Commercials Ltd goods vehicle operator's licence with licence number OF2029459

Order: means a request for specific Services by the Customer in writing.

Outward TUPE Transfer: means a situation where John Brindley is (or is expected to be) a transferor for the purposes of TUPE as a result of the transfer of operations carried out for the Customer.

Quotation Form: means the form issued by John Brindley setting out the Services to be provided.

RHA: means the Road Haulage Association.

John Brindley Equipment: means any equipment, including tools, systems, or facilities, provided by John Brindley or its subcontractors and used directly or indirectly in the supply of the Services which

are not the subject of a separate agreement between the parties under which title passes to the Customer.

Services: means all services which John Brindley has agreed to provide under the Contract as set out in the Order Confirmation, including but not limited to Maintenance Services, Hire Goods services, Storage Services and Distribution Services, together with any other services which John Brindley provides or agrees to provide to the Customer, which will be subject to these Conditions.

Storage Services: means storage of the Goods by John Brindley.

Store: means John Brindley's warehouse or storage facility used to provide the Storage Services.

Standard Storage Terms: means the RHA Conditions of Storage, available to view on our website at www.johnbrindleyltd.co.uk

Standard Transport Terms: means the RHA Conditions of Carriage, available to view on our website at www.johnbrindleyltd.co.uk

Telephone Order: means a verbal request for specific Services by the Customer by telephone or through John Brindley's automated booking system.

Transferee: means a transferee as defined by TUPE

Transferor: means a transferor as defined by TUPE

TUPE: means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (and any successor legislation) and also includes any other legislation under which employment or liabilities arising from employment transfer by operation of law

Transport Unit: means, in the case of Distribution Services, any device used for the carriage, transportation or storage of the Goods.

UK Data Protection Legislation: all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.

VAT: means value added tax chargeable under English law for the time being and any similar additional tax.

Waste: bears its general meaning and also includes "Waste" and "Directive Waste" as defined legislatively.

1.2 Interpretation

(a) A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

(b) A reference to a party includes its personal representatives, successors and permitted assigns.

(c) 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.

(d) 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.

(e) A reference to writing or written includes fax but not email.

(f) The Schedules form part of these Conditions and shall have effect as if set out in full in the body of these Conditions and any reference to these Conditions includes the schedules.

(g) Headings in these Conditions shall not affect their interpretation.

(h) Any obligation in these Conditions on a person not to do something includes, without limitation, an obligation not to agree, allow, permit or acquiesce in that thing being done.

(i) In the event of any conflict between these Conditions, the Standard Storage Terms and the Standard Transport Terms, the terms of these Conditions shall prevail.

(j) If CMR applies to the Services provided and CMR does not contain any provisions relating to an aspect of the Contract or an issue between John Brindley and the Customer then, insofar as any of the Conditions do not derogate from CMR, these Conditions shall apply to that aspect or issue.

2. Basis of contract

2.1 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 law, trade custom, practice or course of dealing.

2.2 If there is any conflict between these Conditions and any specific terms included in the Order Confirmation, then the Order Confirmation shall apply.

2.4 An Order or Telephone Order in response to a Quotation Form constitutes an offer by the Customer to purchase the Services in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order, or any Telephone Order are complete and accurate and acknowledges that they have been referred to these Conditions by John Brindley prior to placing an Order or Telephone Order.

2.5 The Order shall only be deemed to be accepted when John Brindley issues a written acceptance of the Order or Telephone Order ("**Order Confirmation**"), or (if earlier) if John Brindley starts to provide the Services requested by the Customer in the Order or Telephone Order, at which point the Contract shall come into existence.

2.6 The Customer waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Customer that is inconsistent with these Conditions.

2.7 Any samples, drawings or advertising produced by John Brindley and any descriptions or illustrations contained in John Brindley's catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Goods or Hire Goods referred to in them. They shall not form part of the Contract nor have any contractual force.

2.8 In addition to these Conditions, depending on the Services provided by John Brindley to the Customer, the Standard Storage Terms and Standard Transport Terms will apply to those Services.

2.9 A quotation for the Services set out in a Quotation Form shall not constitute an offer. A quotation shall only be valid for a period of 20 Business Days from its date of issue.

3. Commencement and Duration

3.1 The Services supplied under the Contract shall be provided by John Brindley to the Customer from the date of John Brindley's acceptance of the Customer's offer to purchase the Services, in accordance with clause 2.5.

3.2 Subject to clause 12, the Services supplied under the Contract shall continue to be supplied by John Brindley for the period of time specified in the Order Confirmation, or in the absence of a specified time period in the Order Confirmation, until the Contract is terminated by one of the parties giving to the other not less than one month's notice at any time.

4. Supply of Services

4.1 John Brindley shall supply the Services to the Customer in accordance with the Order Confirmation in all material respects.

4.2 John Brindley shall use all reasonable endeavours to meet any performance dates specified in the Order Confirmation, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.

4.3 John Brindley reserves the right to amend the Order Confirmation 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 John Brindley shall notify the Customer in any such event.

4.4 John Brindley warrants to the Customer that the Services will be provided using reasonable care and skill.

4.5 John Brindley shall provide advice and information for the Customer only under the Contract and the Customer shall indemnify John Brindley against all Losses incurred by John Brindley as a result of the Customer passing such advice or information on to any third party.

4.6 In the case of bulk Goods, John Brindley may deal with and/or mix apparently similar Goods without distinguishing between consignments.

4.7 John Brindley's responsibility under the Services is as follows:

(a) for Distribution Services, John Brindley's responsibility for the Goods starts when loading on the Transport Unit is complete and ends when the Goods are tendered for unloading at the Delivery Location;

(b) for Storage Services, John Brindley's responsibility starts when the Goods are accepted into store and ends when they are tendered by John Brindley or its subcontractors for collection or John Brindley becomes aware of the grounds for their removal under clause 5.2(i) or 6.6(c);

(c) where John Brindley provides Distribution Services and/or Storage Services, it shall also be responsible for the Goods while they are transferred from the Transport Unit into the Store and vice versa; and

(d) in the case of forwarding, John Brindley's responsibility is only to engage or propose apparently competent contractors and to give them adequate instructions (on the basis of matters known to John Brindley) in relation to the Goods, and in this case, or where the Contract is for advice, John Brindley is not responsible for the Goods themselves.

4.8 In relation to Maintenance Services, John Brindley shall:

(a) complete a laden roller brake test (in accordance with the best practice standards detailed in the DVSA's Guide to Maintaining Roadworthiness) and in relation to those tests:

- (i) provide the Customer with a print-out from the roller brake test, which records the percentage efficiencies; and
- (ii) transpose those results onto the corresponding safety inspection record;

(b) complete a further laden roller brake test (to be documented as described in clause 4.8(a)) after the completion of any work relating to, or that might have affected the operation of, the vehicle's braking systems;

(c) to update the safety inspection record used to record details of our safety inspections so that this mirrors the content of the example safety inspection record provided in Annex 4A of the DVSA's Guide to Maintaining Roadworthiness;

(d) to complete all safety inspection records accurately;

(e) to return the completed and signed safety inspection record to the Customer when the Customer collects the vehicle(s) from its safety inspection;

(f) to ensure that the pre-MOT inspection includes:

- (i) a laden roller brake test;
- (ii) a headlamp aim test; and
- (iii) an emissions test,

with documentary evidence of the results of these tests to be provided to the Customer.

(g) to provide the Customer with a completed pre-MOT inspection record, which is clearly annotated to indicate that it relates to MOT preparation.

5. Customer's obligations

5.1 The Customer warrants to John Brindley that it is the authorised owner of the Goods, or is authorised by the owner of the Goods to accept these Conditions on the owner's behalf.

5.2 In relation to Distribution Services and Storage Services, the Customer shall:

- (a) ensure that the terms of the Order or Telephone Order, and subsequent Order Confirmation are complete and accurate;
- (b) identify to John Brindley in writing the precise nature and value of the Goods if additional insurance is required by the Customer in accordance with clause 9.9(c)(iv);

- (c) provide John Brindley, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by John Brindley;
- (d) provide John Brindley with such information and materials as John Brindley may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;
- (e) be responsible (at its own cost) for procuring safe and prompt loading and unloading of the Goods at any Delivery Location not occupied by John Brindley;
- (f) obtain and maintain all necessary licences, permissions and consents which may be required for the Services, John Brindley's Equipment and the use of the Customer's Equipment in relation to the Services, in all cases before the date on which the Services are to start;
- (g) comply with all applicable laws, including health and safety laws, and inform John Brindley of all health and safety rules and regulations and any other reasonable security requirements that apply at any of the Customer's premises;
- (h) ensure that all Customer Equipment or Transport Units supplied by the Customer to John Brindley is in good working order and suitable for the purposes for which it is used in relation to the Services and conforms to all relevant United Kingdom standards or requirements;
- (i) warrant that none of the Goods which are handled, stored, distributed, transported or otherwise dealt with by John Brindley in the course of providing the Services include goods which the Customer does not own, illegal substances, pornography, live animals, stolen goods, bullion, antiques, cashiers or travellers cheques, securities, currency, stamps, photographs, deeds, documents of title to property, valuables, jewellery, firearms, money orders, cigarettes, precious stones or metals, antiques, works of art, watches, furs, human remains, fuel, Waste of any type, spirits, brittle/fragile/breakable articles, plains, produce, negotiable instruments in bearer form or any other item which John Brindley considers to present a hazard. John Brindley reserves the right without liability to the Customer to refuse to handle, store, transport or otherwise deal in any way with any goods which the Customer does not own, or with any of the prohibited items referred to in this condition 5.2(i) and John Brindley shall have no liability whatsoever for or in connection with the goods, howsoever arising;
- (j) keep all materials, equipment, documents and other property of John Brindley ("**John Brindley Materials**") at the Customer's premises in safe custody at its own risk, maintain the John Brindley Materials in good condition until returned to John Brindley, and not dispose of or use the John Brindley Materials other than in accordance with John Brindley's written instructions or authorisation;
- (k) comply with any additional obligations as set out in the Order Confirmation;
- (l) obtain and maintain at its own cost appropriate insurance cover and security arrangements in respect of any of the Goods which are handled, stored, distributed, transported or otherwise dealt with by John Brindley in the course of providing the Services;
- (m) ensure that any Goods are adequately packaged and protected so as to enable John Brindley to perform the Services and the Customer warrants that the packaging of any Consignment is sufficient to withstand the ordinary rigours of transit;

(n) notify John Brindley of the correct weight and volume of the Goods so that the correct number of operatives is booked;

(o) before John Brindley assumes any responsibility for or by reference to the Goods, inform John Brindley in writing of any relevant matters; including any special precautions necessitated by the nature, weight or conditions of the Goods and any statutory or other duties specific to the Goods with which John Brindley or others may need to comply; and will promptly after invoicing pay John Brindley's reasonable extra Charges for complying;

(p) where the Services include storage Services, remove any of the Customer's property from John Brindley's premises within seven days of receipt of notice from John Brindley requesting it to do so, and leave John Brindley's premises in a clean, tidy and undamaged condition following such removal;

(q) not cause any damage to any materials, equipment, documents and other property of John Brindley ("**John Brindley Property**") and not dispose of or use the John Brindley Property other than in accordance with the written instructions or authorisation of John Brindley;

(s) ensure that, at the time of loading (where the Services involve transportation) or depositing (where the Services involve storage) of the Goods, any characteristics of the Goods (for example, temperature) or other matters of which John Brindley needs to be aware when planning and directing the delivery or storage of the Goods, are brought to the appropriate attention of John Brindley and, to the extent that John Brindley has the necessary resources and facilities to do so, John Brindley shall transport or store the Goods (as applicable) in an appropriate manner taking into account such characteristics or other matters subject to the Customer agreeing to pay John Brindley's reasonable extra Charges of doing so;

(t) ensure that the Goods shall be presented to John Brindley securely and properly packed in compliance with all applicable laws and shall, when presented, be in a condition to be safely handled, stored and/or carried and so as not to cause injury, damage, contamination or deterioration (or the possibility of them) to any person, premises, equipment or to any other items in any way;

(u) unless otherwise previously agreed the Customer will provide suitable facilities and equipment for, and will procure, safe and prompt loading and unloading of the Goods, and will indemnify John Brindley in respect of any loss, damage or liability resulting from such operations;

(v) warrant that where John Brindley receives the Goods from the Customer already stowed in or on a Transport Unit, the Transport Unit is in good condition, and is suitable for the carriage of the Goods to the intended Delivery Location;

(w) warrant that where John Brindley provides the Transport Unit, on loading by the Customer, the Transport Unit is in good condition, and is suitable for the carriage of the Goods to the Delivery Location;

(x) be responsible for instructing John Brindley on the order of stock removals: and

(Y) co-operate with John Brindley in all matters relating to the Services.

5.3 In relation to Maintenance Services, the Customer shall:

(a) submit to John Brindley each vehicle as agreed prior to the inspection in line with John Brindley's booking process; and

- (b) make available for inspection every maintenance record carried out by John Brindley; and
- (c) ensure that they provide the required MOT fee on account for MOT booking at least 14 days prior to the scheduled MOT test date.

5.4 MOT tests cannot be guaranteed unless payment is made by John Brindley to the DVSA 7 days prior to the test date and therefore an MOT booking cannot be confirmed unless the applicable MOT fee has been paid by the Customer to John Brindley at least 14 days prior to the scheduled MOT test date.

5.5 If the Customer has a Credit Account, the MOT fee will be debited from the Credit Account at least 7 days prior to the MOT test date.

5.6 The Customer acknowledges that the MOT fee will be non-refundable if the MOT is cancelled by the Customer within 3 Business Days of the MOT test.

5.7 The Customer shall not, without the prior written consent of John Brindley, at any time from the date of the Contract to the expiry of three months after the termination of the Contract, solicit or entice away from John Brindley or employ (or attempt to employ) any person who is, or has been, engaged as an employee or subcontractor of John Brindley in the provision of the Services.

5.8 Any consent given by John Brindley in accordance with clause 5.7 shall be subject to the Customer paying to John Brindley a sum equivalent to 15% of the then current annual remuneration of John Brindley's employee or subcontractor or, if higher, 15% of the annual remuneration to be paid by the Customer to that employee or subcontractor.

6. Storage, Delivery and Transit of Goods

6.1 John Brindley shall ensure that each delivery of the Goods is accompanied by a delivery note that shows the description of the Goods; and

6.2 John Brindley shall deliver the Goods or Hire Goods to the location set out in the Order Confirmation or such other location as the parties may agree verbally or in writing ("**Delivery Location**").

6.3 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. John Brindley shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide John Brindley with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

6.4 Delivery is completed on the completion of unloading of the Goods at the Delivery Location, and in relation to the loading and unloading of Goods:

(a) John Brindley accepts no responsibility for the loading to and unloading of Goods from a Transport Unit at the place of collection and the Delivery Location respectively, and no liability shall attach to John Brindley in respect of any loss or damage to the Goods during such operations;

(b) the Customer shall at all times remain liable for the actions or omissions of its employees, servants or agents who are engaged in loading and unloading operations and will indemnify John Brindley in respect of any loss, damage or liability resulting from such operations;

(c) the Customer warrants that any plant, power or labour required for loading or unloading the Goods shall be provided by the Customer or on the Customer's behalf;

(d) for the avoidance of doubt, if John Brindley is instructed to load or unload the Goods, the Customer shall remain liable for any breach of any regulations and shall indemnify John Brindley in accordance with clause 6.4(g) below;

(e) John Brindley shall not be required to provide service beyond the usual place of collection or delivery but if any such service is given by John Brindley it shall be at the sole risk of the Customer;

(f) where John Brindley supplies to and leaves with the Customer a Transport Unit for the Customer to load, the Customer will indemnify John Brindley in respect of any loss or damage sustained to or caused by the Transport Unit prior to collection of the Transport Unit by John Brindley from the Customer;

(g) the Customer shall indemnify John Brindley against all claims and demands whatsoever which could not have been made if such instructions as are referred to in clause 6.4(d) and such service as is referred to in clause 6.4(e) had not been given.

6.5 Dangerous Goods must be disclosed by the Customer and if John Brindley in its absolute discretion, agrees to deal with such Dangerous Goods then:

(a) such Dangerous Goods must be properly and safely packed, marked, labelled and documented in accordance with any legislation for the time being in force for the storage and carriage (as applicable) of such articles or substances and the Customer shall, whilst the Dangerous Goods remain with John Brindley, keep John Brindley informed of any statutory modification or re-enactment thereof or any rules or regulations made thereunder or rules or recommendations made by any relevant authority concerning the storage, handling or transportation (as applicable) of those Dangerous Goods;

(b) prior to receipt of the Dangerous Goods the Customer shall provide John Brindley with such information in writing as will enable John Brindley to know the identity of the Dangerous Goods, the nature of the hazards created thereby, and any action to be taken in an emergency. While the Dangerous Goods remain with John Brindley, the Customer shall keep John Brindley informed of its recommendations on the handling, storage and transportation of such Goods (including all health and safety recommendations). John Brindley shall be entitled to disclose the information supplied by the Customer to its servants, agents and other contractors and any relevant government department;

(c) if such goods become a risk to other goods, property, life or health John Brindley shall, where reasonably practicable contact the Customer in order to require him to remove or otherwise deal with the goods, but reserves the right, in any event, to do so at the expense of the Customer; and

(d) the applicable provisions of these Conditions will apply.

6.6 If the Customer fails to accept delivery of the Goods, the provisions of clause 7.16, 7.17 and 7.18 shall apply.

6.7 John Brindley reserves the right to determine the best route and procedure to be followed in the performance of the Services.

6.8 The Goods shall be removed from the Store by the Customer at the time agreed between the parties. However, John Brindley may at any time by notice in writing to the Customer require the removal of the Goods within 14 days from the date of such notice or, in the case of perishable goods, 3 days; or immediately in case of urgency.

6.9 Where the Customer fails to comply with clause 6.8, or any payment from the Customer is overdue, John Brindley may, without prejudice to its other rights and remedies against the Customer, suspend Storage Services and/or notify the Customer in writing that the Goods may be or are being sold or otherwise disposed of. If the notice is solely because of a failure to pay John Brindley, the provisions of clause 7.16 and 7.17 will apply. If the notice is for any other reason there is no minimum period of notice.

6.10 Notice or action by John Brindley under this condition shall not in itself terminate the contract between the parties unless John Brindley expressly states so.

6.11 The time periods stated in clause 6.8 and 7.16 may be extended by John Brindley in its discretion.

7. Price and payment

7.1 John Brindley's Charges for the Services undertaken shall be payable by the Customer without prejudice to John Brindley's rights against any owner of the Goods.

7.2 In consideration of the provision of the Services by John Brindley, the Customer shall pay the Charges as set out in the Order Confirmation. Where John Brindley accepts a request from the Customer to provide the Services without a price having been quoted or agreed prior to performance of the Services, the Customer shall pay such price as John Brindley shall reasonably specify after performance of the Services, taking into account any Tariff that applies, John Brindley's costs and expenses incurred in providing the Services, and the urgency of the Customer's requirement.

7.3 The Charges for the Services set out in the Order Confirmation or as otherwise determined in accordance with clause 7.2 shall be paid to John Brindley (without deduction or set-off) on the date set out in the Order Confirmation or, if there is no such date specified in the Order Confirmation, then, unless otherwise agreed between John Brindley and the Customer, within 14 days of the date of the invoice issued by John Brindley to the Customer, to a bank account nominated in writing by John Brindley. John Brindley shall invoice the Customer for the price payable, together with VAT at the appropriate rate, at the end of the week or month in which the Services are provided, as notified from time to time.

7.4 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of VAT. Where any taxable supply for VAT purposes is made under the Contract by John Brindley to the Customer, the Customer shall, on receipt of a valid VAT invoice from John Brindley, pay to John Brindley 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.

7.5 The parties agree that John Brindley may review and increase the Charges set out in the Order Confirmation in relation to Services not yet performed by John Brindley. John Brindley will give

the Customer written notice of any such increase 30 days before the proposed date of the increase. If such increase is not acceptable to the Customer, it may, within 7 days of such notice being received or deemed to have been received in accordance with clause 12, terminate the Contract by giving 21 days written notice to John Brindley.

- 7.6 The parties agree that John Brindley may add a fuel surcharge to the Charges. In the event of a change in fuel prices, John Brindley may add or modify a surcharge by an amount it may reasonably consider to reflect the consequential increase in its direct operating costs. The surcharge rates will be as agreed with the Customer.
- 7.7 John Brindley shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom John Brindley engages in connection with the Services including, but not limited to, travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by John Brindley for the performance of the Services, and for the cost of any materials.
- 7.8 In the event that John Brindley incurs increases in operating costs as a result of expenses incurred during transit, including as a result of:
- (a) legislation that may be in place in a particular country through which transit or collection/delivery takes place, or changes or revisions to legislation in such countries; or
 - (b) the introduction or variation of taxes that affect the transit;
- John Brindley will be entitled to invite the Customer to agree new rates, and if an agreement on new rates cannot be reached within 14 days of an invitation in writing to agree new rates, John Brindley will be entitled to terminate the Contract with the Customer immediately.
- 7.9 The Customer shall be liable to pay demurrage for unreasonable detention of any vehicle or other equipment of John Brindley at John Brindley's current rates of demurrage but the rights of John Brindley against any other person on respect thereof shall remain unaffected.
- 7.10 John Brindley reserves the right to recover from the Customer on a full indemnity basis all parking fine and congestion zone charges incurred by John Brindley in the performance of the Services, and any Losses incurred by John Brindley in the event of an abortive or diverted load.
- 7.11 Any queries in respect of invoices should be brought to John Brindley's attention within seven (7) days of the date of the invoice. Where any dispute arises as to the contents of any invoice, the parties shall enter into good faith discussions to resolve such dispute but, for the avoidance of doubt, the Customer shall not be relieved of its obligation to pay the disputed invoice in full and on time.
- 7.12 Without prejudice to any other right or remedy that John Brindley may have, if the Customer becomes insolvent or fails to pay John Brindley any amount due under this Contract on the due date, John Brindley may:

(a) charge interest on any overdue sums from the due date for payment at the annual rate of 4% above the base lending rate from time to time of the Bank of England, accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgment and the Customer shall pay the interest together with the overdue amount immediately on demand; and

(b) suspend all Services until payment has been made in full (which for the avoidance of doubt, in the case of Services which include storage of the Customer's goods, entitles John Brindley to refuse the Customer access to its Goods whilst stored on John Brindley's premises); and

(c) cancel any credit agreement made between John Brindley and the Customer with immediate effect and all sums due to John Brindley shall immediately become due and owing.

7.13 Time for payment by the Customer shall be of the essence of the Contract.

7.14 All sums payable to John Brindley under the Contract shall become due immediately on its termination, despite any other provision. This clause 7.14 is without prejudice to any right to claim for interest under the law, or any such right under the Contract.

7.15 John Brindley may, without prejudice to any other rights it may have, set off any liability of the Customer to John Brindley against any liability of John Brindley to the Customer.

7.16 Subject to clause 7.17 below, John Brindley:

- (a) has a lien on all Goods and documents relating to Goods in its possession for all sums due at any time to John Brindley from the Customer in relation to the Services and storage Charges shall continue to accrue on any Goods detained under the lien;
- (b) shall be entitled, on at least 21 days' notice in writing to the Customer, to sell or dispose of or deal with such Goods or documents as agent for, and at the expense of the Customer and apply the proceeds in or towards the payment of such sums due to John Brindley; and
- (c) shall, upon accounting to the Customer for any balance remaining after payment of any sum due to John Brindley, and for the cost of sale and or disposal of the Goods, be discharged of any liability in respect of the Goods; and
- (d) shall be entitled to recover the cost of sale and disposal of the Goods from the Customer if the proceeds do not cover the sum due to John Brindley.

7.17 Where Goods detained under the lien set out in clause 7.16 are liable to perish or deteriorate, John Brindley's right to sell or dispose of or deal with the Goods shall arise immediately upon any sum becoming due to John Brindley, subject only to John Brindley taking reasonable steps to bring to the Customer's attention its intention to sell or dispose of the Goods before doing so.

7.18 Where John Brindley is unable to make delivery of all or part of a Consignment as requested by the Customer, John Brindley shall take all reasonable steps to notify the Customer of non-delivery and seek the Customer's further instructions. Pending such instructions, John Brindley shall hold the Consignment (or the non-delivered part) at the sole risk and expense of the Customer.

7.19 The Customer shall be liable to pay to John Brindley, on demand, all Losses, including storage costs, incurred by John Brindley as a result of any failure by the Customer to take delivery as set out in clause 7.18.

7.20 John Brindley shall be entitled at the Customer's expense, to dispose or sell:

- (a) after at least 21 days' notice to the Customer or (where the Customer cannot be traced and reasonable efforts have been made to contact any parties who may reasonably be supposed by John Brindley to have any interest in the goods) without notice, any Goods which have been held by John Brindley for 60 days and which cannot be delivered as instructed by the Customer; and

(b) without prior notice, any Goods which have perished, deteriorated, or altered or are in immediate prospect of doing so in a manner which has caused or may reasonably be expected to cause loss or damage to John Brindley, or third parties, or to contravene any applicable laws or regulations.

7.21 Where John Brindley exercises any power of sale of the Goods, John Brindley shall be entitled to sell on the basis of the best offer immediately available to it without obligation to investigate any specialist market in such type of merchandise.

8. Hire Goods

8.1 Where hire of the Hire Goods is to a Customer who is an individual and the hire would be covered by the Consumer Credit Act 1974, the duration of the Hire Period shall not exceed 3 months, after which time the Contract shall be deemed to have automatically terminated. Accordingly, the hire of any Hire Goods is not covered by the Consumer Credit Act 1974. The Customer warrants that it is hiring the Hire Goods in the ordinary course of its business.

8.2 John Brindley and the Customer shall agree in writing the terms of the Hire Period including the terms on which the Contract will terminate. John Brindley reserves the right to specify a date of return of the Hire Goods and a drop off point in the Order Confirmation.

8.3 The Hire Goods must be returned by the Customer at the end of the Hire Period as specified in the Order Confirmation in good working order and condition (fair wear and tear excepted) and in a clean condition together with all insurance policies, licences, registration and other documents relating to the Hire Goods. The Customer must not use or allow the Hire Goods to be used after the termination of the Hire Period. John Brindley will be entitled to charge additional Charges and any reasonable expenditure John Brindley incurs resulting from any such unauthorised use.

8.4 The Customer shall:

(a) not remove or deface, alter or cover up any label, nameplate, mark or informational notice on the Hire Goods nor interfere with the Hire Goods, their working mechanisms or any other parts of them and shall take reasonable care of the Hire Goods and only use them for their proper purpose in a safe and correct manner in accordance with any operating and/or safety instructions provided or supplied to the Customer and any relevant legislation and/or best practice standards;

(b) notify the John Brindley immediately after any breakdown (including but not limited to any failure of the Hire Goods to work satisfactorily), and loss of and/or damage to the Hire Goods as soon as is practicably possible;

(c) take adequate and proper measures to protect the Hire Goods from theft, damage and/or other risks and properly supervise the Hire Goods where the young, elderly or mentally or physically disabled (whether temporarily through drink or drugs or otherwise) are using or are likely to use the Hire Goods;

(d) notify John Brindley of any change of its address and upon John Brindley's request provide details of the location of the Hire Goods;

(e) permit John Brindley at all reasonable times to inspect the Hire Goods including procuring access to any property where the Hire Goods are situated;

(f) keep the Hire Goods at all times in its possession and control;

(g) be responsible for the conduct and cost of any testing, examinations and/or checks in relation to the Hire Goods required by any legislation, best practice and/or operating instructions except to the extent that John Brindley has agreed to provide them as part of any Services;

(h) not do or omit to do anything which will or may be deemed to invalidate any policy of insurance related to the Hire Goods which is notified to the Customer or taken out by the Customer;

(i) not continue to use Hire Goods where they have been damaged and/or in the event of any breakdown will notify John Brindley immediately if the Hire Goods are involved in an accident resulting in damage to the Hire Goods, other property and/or injury to any person; and

(j) where the Hire Goods require fuel, oil and/or electricity ensure that the proper type and/or voltage is used and that, where appropriate, the Hire Goods are properly installed by a qualified and competent person.

8.5 Risk in the Hire Goods shall pass immediately to the Customer when they leave the physical possession or control of John Brindley at any time after the Order Confirmation.

8.6 Risk in the Hire Goods shall not pass back to John Brindley from the Customer until the Hire Goods are back in the physical possession of John Brindley. This shall apply even if John Brindley has agreed to cease charging the Charges.

8.7 Ownership of the Hire Goods remains at all times with John Brindley. The Customer has no right, title or interest in the Hire Goods except that they are hired to the Customer.

8.8 The Customer must not deal with the ownership or any interest in the Hire Goods. This includes but is not limited to selling, assigning, mortgaging, pledging, charging, securing, hiring, withholding, exerting any right to withhold, disposing of and/or lending.

8.9 John Brindley shall require the Customer to insure the Hire Goods on such reasonable terms and for such reasonable risks as John Brindley will specify.

8.10 Where the Contract is for the hire of a Hire Vehicle, the Customer shall:

(a) not allow the Hire Vehicle to be driven by anyone other than those persons specified in the Contract;

(b) not allow the Hire Vehicle to be driven by an individual whose ability to drive is impaired by mental or physical incapacity or who is restricted by law;

(c) not take the Hire Vehicle outside of the United Kingdom unless this has been agreed in writing with John Brindley;

(d) only refuel the Hire Vehicle with the correct type of fuel as stated on the Contract;

(e) ensure that the Hire Vehicle is returned with a full tank of fuel;

(f) be liable for all fees, tolls, fines and penalties incurred in connection with the use of the Hire Vehicle and for which John Brindley is charged, unless they have arisen through the fault of John Brindley;

(g) be responsible for carrying out the usual vehicle checks (including but not limited to daily engine oil level, water levels, fuel levels, and regular checks on tyre pressure, etc.) and the Customer must respect the maintenance cycle of the Hire Vehicle as stated in the maintenance guide, if any and failure to do so may result in charges being levied against the Customer;

(h) be responsible for all fees incurred in connection with any callouts by John Brindley's engineer in accordance with clause 8.10(g);

(i) when parking the Hire Vehicle, even for a short period, lock it and make use of the Hire Vehicle's alarm and/or immobilisation equipment.

(j) not leave the Hire Vehicle unoccupied with the keys in the ignition;

(k) not use the Hire Vehicle under any of the following conditions or for any of the following purposes:

(i) driving the Hire Vehicle under the influence of alcohol, drugs or any other type of narcotic substances;

(ii) transportation of inflammable or dangerous goods, as well as toxic, corrosive, radioactive or other harmful substances;

(iii) carrying anything which, because of its smell or condition, harms the Hire Vehicle or causes the Supplier to lose time or money before it can rent the Hire Vehicle again;

(iv) transportation of live animals;

(v) with a roof rack, luggage carrier or similar;

(vi) re-rental to or use by persons other than the Customer and its employees;

(vii) carrying passengers for hire or reward;

(viii) participating in rallies, competitions or trials, wherever they may take place;

(ix) giving driving lessons;

(x) pushing or towing another vehicle or exceeding the authorised load weight;

(xi) travelling on non-paved roads or on roads, the surface or state of repair of which could put the Hire Vehicle's wheels, tyres or its under body mechanics at risk;

(xii) intentionally committing any offence;

(xiii) allowing the goods and baggage carried in the Hire Vehicle, including their packing and stowage equipment, to damage the Hire Vehicle, or to put the occupants abnormally at risk; and

(xiv) in any way which breaks the Highway Code, road traffic laws or any other laws.

(l) be liable for any offence committed during the Hire Period which relates in any way to the Customer's use of the Hire Good.

9. Indemnity and Limitation of Liability – the Customer's attention is particularly drawn to this clause

9.1 If John Brindley's performance of its obligations under the Contract is prevented or delayed by any Force Majeure Event, or any act or omission of the Customer, its agents, subcontractors, consultants or employees or failure by the Customer to perform any relevant obligation including payment of the Charges ("**Customer Default**"), John Brindley shall not be liable for any Losses sustained or incurred by the Customer arising directly or indirectly from such prevention or delay.

9.2 John Brindley shall not be liable for any Losses sustained or incurred by the Customer arising directly or indirectly from:

(a) rejected Goods in circumstances where the reason for such rejection is attributable to the Customer (including without limitation, where the Goods are at an incorrect temperature or have quality issues at the time they are loaded on to John Brindley's vehicle (in the case of Distribution Services), or deposited at John Brindley's premises (in the case of Storage Services)); or

(b) the nature of the Goods (including, but not limited to, temperature sensitive goods or inherent liability to natural deterioration or wastage and/or inherent defect) unless the Customer has, upon placing its order, given John Brindley written instructions with sufficient detail regarding any particular precautions or special treatment to be taken or provided for the Goods and these details are recorded in the Order Confirmation; or

(c) carriage, storage or handling of Goods which are prohibited under these Conditions which are unknowingly and unwittingly carried, stored or handled by John Brindley by reason of a failure of the Customer to comply with the obligations set out in clause 5.2(b); or

(d) carriage, storage or handling of sealed containers of multiple Goods where John Brindley have not opened such sealed containers and are relying on the Customer to comply with their obligations set out in Clause 5.2 (m), (n) and (o) in respect of the sealed containers of multiple Goods.

9.3 The Customer shall be liable to pay to John Brindley, on demand, all Losses sustained or incurred by John Brindley (including, without limitation, any direct, indirect or consequential losses, loss of profit and loss of reputation, loss or damage to property and those arising from injury to or death of any person and loss of opportunity to deploy resources elsewhere) arising directly or indirectly from the Customer's fraud, negligence or Customer Default or arising from John Brindley carrying out the Customer's instructions, subject to John Brindley confirming such costs, charges and losses to the Customer in writing.

9.4 The Customer shall indemnify the Carrier against: -

(a) all Losses incurred by John Brindley (including but not limited to loss of or damage to the carrying vehicle and to other goods carried) by reason of any error, omission, mis-statement or misrepresentation by the Customer or other owner of the Goods or by any servant or agent of either of them, insufficient or improper packing, labelling or addressing of the Goods; and

(b) all Losses incurred by John Brindley or any claims or demands whatsoever (including for the avoidance of doubt claims alleging negligence), by whomsoever made and howsoever arising (including but not limited to claims caused by or arising out of the carriage or storage of Dangerous Goods (whether such goods were declared to John Brindley or not) and claims made upon John Brindley by H.M. Revenue and Customs (in respect of dutiable goods consigned in bond) in respect of any loss or damage whatsoever to, or in connection with, or seizure or forfeiture of, the Goods whether or not caused or contributed to directly or indirectly by any act, omission, neglect, default or other wrongdoing on the part of John Brindley, its servants, agents or sub-contractors and/or as a result of John Brindley following any instructions given by the Customer in relation to Dangerous Goods or any other matter relating to this Contract.

9.5 If the performance by John Brindley of any of its obligations under the Contract is prevented or delayed by any Customer Default then John Brindley shall, without limiting its other rights or remedies, 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 to the extent the Customer Default prevents or delays the performance of John Brindley of any of its obligations.

9.6 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

9.7 Nothing in these Conditions limits or excludes the liability of either party:

- (a) for death or personal injury resulting from negligence; or
- (b) for any damage or liability incurred by the other party as a result of fraud or fraudulent misrepresentation by that party.

9.8 Subject to clause 9.7 John Brindley shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for:

- (i) loss of profits; or
- (ii) loss of business; or
- (iii) depletion of goodwill and/or similar losses; or
- (iv) loss of anticipated savings; or
- (v) loss of contract; or
- (vi) loss of use; or
- (vii) loss of corruption of data or information; or
- (viii) any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses.

9.9 Except as otherwise provided in these Conditions, the liability of John Brindley in respect of claims for physical loss, mis-delivery of or damage to goods comprising the Consignment, howsoever arising, shall in all circumstances be limited to the lesser of:

- (a) the value of the goods actually lost, mis-delivered or damaged; or
- (b) the cost of repairing any damage or of reconditioning the goods; or
- (c) a sum calculated at the rate of £1,300 Sterling per tonne on the gross weight of the goods actually lost, mis-delivered or damaged;

and the value of the goods actually lost, mis-delivered or damaged shall be taken to be their invoice value if they have been sold and shall otherwise be taken to be the replacement cost thereof to the owner at the commencement of transit, and in all cases shall be taken to include any Customs and Excise duties or taxes payable in respect of those goods: Provided that:

- (i) in the case of loss, mis-delivery of or damage to a part of the Consignment the weight to be taken into consideration in determining the amount to which John Brindley's liability is limited shall be only the gross weight of that part regardless of whether the loss, mis-delivery or damage affects the value of other parts of the Consignment;
- (ii) nothing in this Condition shall limit the liability of John Brindley to less than the sum of £10;

- (iii) John Brindley shall be entitled to provide proof of the weight and value of the whole of the Consignment and of any part thereof lost, misdelivered or damaged;
- (iv) the Customer shall be entitled to give John Brindley notice in writing to be delivered at least seven days prior to commencement of transit requiring that the £1,300 per tonne limit in 9.9(c) above be increased, but not so as to exceed the value of the Consignment, and in the event of such notice being given the Customer shall be required to agree with John Brindley an increase in the carriage charges in consideration of the increased limit, but if no such agreement can be reached the aforementioned £1,300 per tonne limit shall continue to apply.

9.10 The liability of John Brindley in respect of claims for any other loss whatsoever (including indirect or consequential loss or damage and loss of market), and howsoever arising in connection with the Consignment, shall not exceed the amount of the carriage charges in respect of the Consignment or the amount of the claimant's proved loss, whichever is the lesser, unless:

(a) at the time of entering into the Contract with John Brindley the Customer declares to John Brindley a special interest in delivery in the event of physical loss, mis-delivery or damage or of an agreed time limit being exceeded and agrees to pay a surcharge calculated on the amount of that interest, and

(b) at least 7 days prior to the commencement of transit the Customer has delivered to John Brindley confirmation in writing of the special interest, agreed time limit and amount of the interest.

9.11 Where the Customer or a consignee signs a proof of delivery note (or note of a similar nature) without caveat then John Brindley shall under no circumstances whatever be liable to the Customer or the consignee (as the case may be) in respect of a claim for damage to the Consignment, and the Customer or the consignee (as the case may be) may not reject such Consignment on the basis of damage, where such damage was apparent on normal visual inspection.

9.12 John Brindley shall not be liable for any Losses to the extent that they are caused or contributed to by a breach of the Customer's obligations.

10. Insurance

10.1 The Customer shall obtain and maintain at its own cost appropriate insurance cover and security arrangements in respect of any of the Hire Goods.

10.2 No additional insurance will be effected except if the Customer requests insurance beyond the limits set out in clause 9.9(c)(iv) must be followed.

10.4 John Brindley shall not be liable to the Customer in respect of any insurance John Brindley takes out for the Goods as instructed by the Customer.

10.5 The Customer shall, on demand, supply copies of the relevant insurance policies or other insurance confirmation acceptable to John Brindley and proof of premium payment to John Brindley to confirm the insurance arrangements.

11. Time Limit for Claims - the Customer's attention is particularly drawn to this clause

11.1 John Brindley shall not be liable for:

- (a) damage to the whole or any part of the Consignment, or physical loss, mis-delivery or non-delivery of part of the Consignment unless advised thereof in writing within 48 hours, after the termination of storage or transit;

Provided that if the Customer proves that,

- (i) it was not reasonably possible for the Customer to advise John Brindley or make a claim in writing within the time limit applicable, and
- (ii) such advice or claim was given or made within a reasonable time, John Brindley shall not have the benefit of the exclusion of liability afforded by this Condition.

11.2 John Brindley shall in any event be discharged from all liability whatsoever and howsoever arising in respect of the Consignment unless legal proceedings are commenced are brought within one year of the date when transit commenced.

11.3 In the computation of time where any period provided by these Conditions is seven days or less, Saturdays, Sundays and all statutory public holidays shall be excluded.

12. Data protection

12.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 12 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation. In this Clause 12, Applicable Laws means (for so long as and to the extent that they apply to John Brindley) the law of the European Union, the law of any member state of the European Union and/or Domestic UK Law; and Domestic UK Law means the UK Data Protection Legislation and any other law that applies in the UK.

12.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the controller and John Brindley is the processor.

12.3 Without prejudice to the generality of Clause 12.1, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of personal data to John Brindley for the duration and purposes of the Contract.

12.4 Without prejudice to the generality of Clause 12.1 John Brindley shall, in relation to any personal data processed in connection with the performance by John Brindley of its obligations under the Contract:

(a) process that personal data only on the documented written instructions of the Customer unless John Brindley is required by Applicable Laws to otherwise process that personal data. Where John Brindley is relying on Applicable Laws as the basis for processing personal data, John Brindley shall promptly notify the Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit John Brindley from so notifying the Customer;

(b) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Customer, to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where

appropriate, pseudonymising and encrypting personal data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to personal data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);

(c)ensure that all personnel who have access to and/or process personal data are obliged to keep the personal data confidential; and

(d)not transfer any personal data outside of the European Economic Area unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:

(i) the Customer or John Brindley has provided appropriate safeguards in relation to the transfer;

(ii) the data subject has enforceable rights and effective legal remedies;

(iii) John Brindley complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any personal data that is transferred; and

(iv) John Brindley complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the personal data;

(e)assist the Customer, at the Customer's cost, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;

(f) notify the Customer without undue delay on becoming aware of a personal data breach;

(g) at the written direction of the Customer, delete or return personal data and copies thereof to the Customer on termination of the agreement unless required by Applicable Law to store the personal data; and

(h) maintain complete and accurate records and information to demonstrate its compliance with this Clause 12 and immediately inform the Customer if, in the opinion of John Brindley, an instruction infringes the Data Protection Legislation.

11.5 Either party may, at any time on not less than 30 days' notice, revise this Clause 12 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to the Contract).

11.6 Any data obtained by John Brindley is used purely for contractual and or operational reasons. Please refer to our Data Privacy Statement which can be viewed on our website at www.johnbrindleyltd.co.uk

13.Termination

13.1 Without prejudice to any other rights or remedies which the parties may have, either party may terminate the Contract without liability to the other immediately on giving written notice to the other if:

(a)the other party fails to pay any amount due under the Contract on the due date for payment and remains in default not less than seven days after being notified in writing to make such payment; or

- (b) the other party commits a material breach of any of the terms of the Contract and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing of the breach; or
- (c) the other party repeatedly breaches any of the terms of the Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of the Contract; or
- (d) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or a limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being a natural person) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply; or
- (e) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party; or
- (f) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or on connection with the winding up of that other party other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (g) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party (being a company); or
- (h) a floating charge holder over the assets of that other party (being a company) has become entitled to appoint or has appointed an administrative receiver; or
- (i) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party; or
- (j) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days; or
- (k) the other party (being an individual) is the subject of a bankruptcy petition order;
- (l) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 11.1(d) to clause 11.1(k) (inclusive); or
- (m) the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business; or
- (n) there is a change of control of the other party (as defined in section 574 of the Capital Allowances Act 2001); or

(o) the Customer's financial position deteriorates to such an extent that in John Brindley's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or

(p) the other party (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.

13.2 Without limiting its other rights or remedies, John Brindley may suspend provision of the Services under the Contract or any other contract between the Customer and John Brindley if the Customer becomes subject to any of the events listed in clause 12.1(d) to 12.1(k) (inclusive), or John Brindley reasonably believes that the Customer is about to become subject to any of them.

13.3 On termination or expiry of the Contract for any reason:

13.3.1 the Customer shall immediately pay to John Brindley all of John Brindley's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, John Brindley may submit an invoice, which shall be payable immediately on receipt;

13.3.2 the Customer shall, within a reasonable time, return all of the John Brindley Equipment and John Brindley's property in its possession. If the Customer fails to do so, then John Brindley may enter the Customer's premises and take possession of it. Until the John Brindley Equipment has been returned or repossessed, the Customer shall be solely responsible for its safe keeping and will not use them for any purpose not connection with this Contract;

13.3.3 at John Brindley's request, any Goods of the Customer in the possession of John Brindley shall be removed by the Customer at the time agreed between the Parties, or if such agreement cannot be reached for any reason, John Brindley may at any time by notice in writing to the Customer require the removal of such goods within 3 days from the date of such notice. John Brindley is not responsible for any damage to the goods in the event the Customer fails to collect the same and such goods perish or develop a defect or quality issue as a result; and

13.3.4 the accrued rights and liabilities of the parties as at termination (including the right to claim damages in respect of any breach of the Contract which existed at or before the date of expiry or termination) and the continuation of any provision expressly stated to survive or implicitly surviving termination, shall not be affected.

13.4 On termination or expiry of the Contract (however arising), the following clauses shall survive and continue in full force and effect:

13.4.1 clause 9;

13.4.2 clause 11;

13.4.3 clause 12;

13.4.4 clause 13

13.4.5 clause 14;

13.4.6 clause 15; and

13.4.7 clause 16.

13.5 Termination of the Contract shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of this Contract that existed at or before the date of termination.

14. TUPE and Service Provision Change

14.1 Where there is an Inward TUPE Transfer, the Customer will indemnify John Brindley against all liability and expense which John Brindley may incur in connection with:

- (a) the employment or the termination of employment, before the Effective Time, of any Employee;
- (b) any failure by the Transferor to comply with its legal obligations in respect of any of the Employees;
- (c) the transfer to John Brindley, by virtue of TUPE or otherwise, of the employment of any person or the applicability of terms of employment, other than those previously notified to, and previously accepted by, John Brindley in writing;
- (d) any act or omission of the Transferor, on or before the Effective Time, for which John Brindley becomes liable by virtue of TUPE or otherwise; or
- (e) the Transferor's failure to comply with its obligations under regulation 13 of TUPE.

14.2 Where there is an Outward TUPE Transfer, the Customer will indemnify John Brindley against all liability and expense which John Brindley may incur in connection with the Transferee's failure to comply with its legal obligations, including without limitation those under regulation 13 of TUPE.

15. Confidentiality

15.1 The Customer shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Customer by John Brindley, its employees, agents, consultants or subcontractors and any other confidential information concerning John Brindley's business, suppliers, customers or products or services which the Customer may obtain.

15.2 The Customer may disclose such information:

- (a) to its employees, officers, representatives, advisers, agents or subcontractors who need to know such information for the purposes of carrying out the Customer's obligations under the Contract; and
- (b) as may be required by law, court order or any governmental or regulatory authority.

15.3 The Customer shall ensure that its employees, officers, representatives, advisers, agents or subcontractors to whom it discloses such information comply with this clause 15.

15.4 The Customer shall not use any such information for any purpose other than to perform its obligations under the Contract.

15.5 All materials, equipment and tools, drawings, specifications and data supplied by John Brindley to the Customer (including the John Brindley Equipment) shall, at all times, be and remain the exclusive property of John Brindley, but shall be held by the Customer in safe custody at its own risk and maintained and kept in good condition by the Customer until returned to John Brindley, and shall not be disposed of or used other than in accordance with John Brindley's written instructions or authorisation.

16. Force majeure

16.1 John Brindley shall not be in breach of this Contract nor liable for delay in performing, or failure to perform, any of its obligations under this Contract if such delay or failure result from a Force Majeure Event.

16.2 If the period of delay or non-performance continues for more than 3 weeks, John Brindley may terminate this Contract immediately by giving written notice to the Customer.

17. Assignment

17.1 John Brindley may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract, and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent.

17.2 The Customer may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of John Brindley.

17.3 If the Customer wishes to transfer the Goods or any part to the account of another person it shall give prior written notice to John Brindley. The notice shall not be effective unless before the effective date of the transfer the proposed transferee notifies John Brindley in writing that it wishes to become a customer, is to be bound by these Conditions. The Customer will pay the Charges for the period until written acceptance by John Brindley of the notice and of the proposed transferee as a customer. In any event the Customer will remain jointly liable for Charges and indemnities relating to Goods consigned by it to John Brindley. The Goods remain subject to any lien which applies at the time of transfer.

17.4 Each party that has rights under the Contract is acting on its own behalf and not for the benefit of another person.

18. Variation

18.1 John Brindley may, from time to time and without notice, change the Services in order to comply with any applicable safety or statutory requirements, provided that such changes do not materially affect the nature, scope of, or the Charges for the Services.

18.2 Subject to clause 18.1, no variation of the Contract or these Conditions or of any of the documents referred to in them shall be valid unless it is in writing and signed by or on behalf of each of the parties.

19. Waiver

19.1 A waiver of any right under the Contract or law is only effective if it is in writing and it applies only to the circumstances for which it is given. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that (or any other) right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that (or any other) right or remedy.

19.2 Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.

20. Severance

20.1 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.

20.2 If one party gives notice to the other of the possibility that any provision or part-provision of this Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

21. Third party rights

No one other than a party to this Contract and their permitted assignees shall have any right to enforce any of its terms.

22. No partnership or agency

Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.

23. Notices

Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall be:

(i) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office; or

(ii) sent by email to **customer.service@johnbrindleyltd.co.uk**

(b) Any notice or communication shall be deemed to have been received:

(i) if delivered by hand, on signature of a delivery receipt;

(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, 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 23(b)(iii), business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.

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

24. Entire agreement.

24.1 This Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

24.2 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

25. Governing law and jurisdiction

25.1 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.

25.2 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Contract or its subject matter or formation.

