



AGREEMENT

THE PARTIES

This is a contract between:

- (1) **AMALGA LIMITED** (Company No. 04197644) whose registered office is at Unit 1 Polar Park, Bath Road, West Drayton, England, UB7 0EX (hereinafter referred to as "**Amalga**"); and
- (2) the company or organisation referred to in the Works Order (hereinafter referred to as the "**Customer**")

BACKGROUND

- (A) Amalga is in business on its own account engaged in the provision of services at civilian airports.
- (B) Amalga has agreed to provide the Services to the Customer as described in the Works Order.
- (C) The Parties have agreed that the Services shall be provided in accordance with these Terms and Conditions of Business (the "**Terms**").

Signed
by:.....
For and on behalf of Amalga

Signed by:.....
For and on behalf of the Customer

TERMS AND CONDITIONS OF BUSINESS

Section 1 – Terms applicable to all Contracts

1.1 Definitions and interpretation

1.1.1 In these Terms, unless the context otherwise requires, the following words have the following meanings:

Agreement: means the agreement as set out on page 1 of these Terms;

Airport: Specific Airport as identified;

Airport Security Control: the security control posts at the Airport;

Airside Clearance Services: the issue by Amalga to the Customer of a TAP which may be provided to the Customer (and used for the benefit of the Customer's vehicles and/or personnel, as the case may be) as part of the Services as more particularly described in the Works Order;

Amalga Authorised Representative: shall be as named on the Works Order;

Assignment: the period for which an Employee is supplied to carry out the Supply of Staff Services under Section 3;

Authorised Representative: shall mean the Amalga Authorised Representative or the Customer Authorised Representative or both of them, as the context requires;

Charges: for the purposes of:

- a) Section 2 of these Terms means the charges payable by the Customer to Amalga for the provision of the Logistics, Support and Storage Services as may be specified in the relevant Works Order or as may be notified by Amalga to the Customer from time to time;
- b) Section 3 of these Terms means the sums calculated according to the number of hours worked by the Employee at the rate specified in the Works Order accompanying this Agreement and any travel or other expenses as may have been agreed with the Customer in accordance with clause 3.5;
- c) Section 4 of these Terms means the charges payable by the Customer to Amalga for the provision of the Installation and Strip-out Services as may be specified in the relevant Works Order or as may be notified by Amalga to the Customer from time to time.

Confidential Information: all identifiable methodology, know-how, experience, data,

databases, flow charts, reports, tables or other material produced in relation to the relevant Contract (including any negotiations leading to it) and any other information of whatever kind (whether commercial, technical, financial, operational or otherwise, whether communicated verbally, in writing or in any other form and whether or not expressly stated to be confidential) relating to Amalga (including but not limited to) its business, products, suppliers and customers;

Contract: a contract created by the issuing of a Works Order, comprising these Terms, the Works Order and the Supporting Documents;

Customer Authorised Representative: shall be as named on the Works Order;

Customer Project: the project identified in the Works Order;

Customer Site: means in respect of the Logistics, Support and Storage Services the destination for the pickup of Delivery of the Goods within the Site as is specified in the Works Order. In respect of the Installation and Strip-out Services means the site where the strip-out and/or installation services are to be carried out;

Dangerous Goods:

- a) Goods named individually in the Works Order issued from time to time by the Health and Safety Commission, explosives, radioactive material, any dangerous weapon, drug, poison, damaging article or substance or any article or substance likely to encourage vermin or other pests or likely to cause infection; or
- b) any Goods which, although not included in (a) above, in the sole opinion of Amalga, present a similar hazard.

Delivery Address: the final destination for Delivery of the Goods within the Site as specified in the Works Order;

Delivery and Delivered: shall have the meaning given to it in clause 2.4.7;

Employee: any individual whose services are supplied by Amalga to the Customer under the terms of the Contract and shall include any replacement or substitute supplied to the Customer in accordance with clause 3.10.6;

Engagement: the engagement of the Employee by the Customer on the terms of the Contract and any employment or use of the Employee on a permanent or temporary basis, directly or indirectly, whether under a contract of service or

for services, an agency, licence, franchise or partnership arrangement; or any other arrangement;

Escort Services: the escort of a Customer's vehicle and/or personnel (as the case may be) by a member of Amalga's personnel in order to facilitate the Customer's vehicles and/or the Customer's personnel (as the case may be) passage through Airport Security Control at the Site;

Event of Force Majeure: in respect of either party, an event or circumstance beyond the reasonable control of that party which causes delays in that party performing or failure of that party to perform any of its obligations under the Contract including (but not limited to): an act of God, strike, lock-out or other industrial actions or trade disputes; war declared or undeclared, threat of war, terrorist act, revolution, riot, civil commotion, public demonstration; lightning, fire, storm, flood or earthquake; power failure or explosion, fault or failure of any plant or apparatus or delays at Airport security posts (caused by a party other than Amalga);

Goods: the building and construction materials, machinery, equipment, retail unit fittings, display units, merchandise, waste disposal units and/or any other materials and parts thereof (including packaging) whether a single item or in bulk or contained in one parcel, package or container as the case may be or any number of separate items, parcels, packages or containers in relation to which Logistics, Support and Storage Services are provided;

Group: in relation to a company, that company, its Subsidiaries, its Holding Companies, and their Subsidiaries;

Holding Company: a holding company within the meaning ascribed to that expression by sections 736 and 736A of the Companies Act 1985;

Installation and Strip-out Services: means such installation and strip-out services as are identified in the Works Order, including but not limited to appointments, unitry and mechanical and electrical services;

Introduction Fee: the sum payable by the Customer to Amalga should the Customer engage the services of the Employee on a permanent basis with consent;

Logistics, Support and Storage Services: means in relation to the Goods, such logistics and/or support and/or storage services as are identified in the Works Order;

Moving Equipment: such equipment and/or machinery as may be used to lift and/or move the Goods including (but not limited to) fork lift trucks and other lifting equipment;

Relevant Period: 26 weeks commencing on the day that the Employee last performed the Services for the Customer pursuant to the Assignment or if more than one Assignment of the last day of the last Assignment. If there is no Assignment, the Relevant Period means 26 weeks from the date on which the Employee was introduced to the Customer by Amalga;

Restricted Period: the 12 months following either: the first day of the Employee's Assignment; or the termination or expiration of the relevant Contract whichever is the later.

Services: the services which Amalga may from time to time provide to the Customer (including but not limited to) Logistics, Support and Storage Services (which may include Airside Clearance Services, Escort Services, Transit, and/or Waste Removal Services), Supply of Staff Services and/or Installation and Strip-out Services as more particularly described in the Works Order;

Service Request: a request made by the Customer to Amalga for the provision of Services and may include any request made via Amalga's web access system, email, fax or otherwise in writing or by telephone;

Site: the location specified in the Works Order;

Special Interest: as provided in the Works Order;

Start Date: the start date specified in the Works Order or otherwise agreed between the parties in writing;

Storage: the storage and handling of Goods including unloading and loading of Goods and movement of Goods between stores as described in the Logistics, Support and Storage Services and such other ancillary services as Amalga may agree to in writing, and the words "Store" and "Stored" shall be construed accordingly.

Subsidiary: has the meaning given to it in sections 736 and 736A of the Companies Act 1985;

Supporting Documents: the scope, drawings, specifications and/or other documents describing the Services to be provided under, and forming part of, a Works Order.

Supply of Staff Services: means such Logistics, Support and Storage Services that include supply of staff as are identified in the Works Order;

TAP: a temporary airside pass which permits a vehicle and/or individuals (as the case may be) to pass through Airport Security Control at the Site which may be issued to the Customer as part of the Services;

Terms: these terms and conditions;

Transfer Fee: the sum payable by the Customer to Amalga should the Customer engage the services of the Employee on a permanent basis in breach of clause 3.8 within the Restricted Period.

Transfere : has the meaning given to it in clause 1.6.3.

Transit: the conveyance of the Goods by Amalga and shall include (but shall not be limited to) the conveyance of the Goods within the Customer Site and/or Delivery Address and outside of the Customer Site and/or Delivery Address and the period of such conveyance shall commence when Amalga takes possession of the Goods (either manually, by Amalga's personnel, and/or when the Goods are uploaded onto Amalga's Moving Equipment and/or vehicle) either:

a) at the Customer Site and end on Delivery to the Delivery Address; or

b) at the Customer Site and end on re-Delivery to the Delivery Address;

Waste Removal Services: means such waste removal services as are identified within Section B2 of Table 2 of the Works Order;

Working Day Monday to Friday in each week excluding public and bank Holidays, in the UK;

Works Order: the works order issued by Amalga for the provision of the Services, in the form attached at the Schedule to these Terms containing confirmation of:

a) the nature and requirements of the Customer Project;

b) the Services to be provided by Amalga in relation to the relevant Customer Project;

c) timescales for completion of the Services; and

d) details of the Charges payable in respect of the Services specified in the Work Order, and attaching copies of the agreed Supporting Documents.

1.1.2 Any reference to any legislation or legislative provision shall be construed as a reference to that legislation or provision as amended, re-enacted or extended at the relevant time.

1.1.3 Any reference to a person shall be construed as a reference to any person, corporate entity, government, state or agency

of a state or any association or partnership (whether or not having separate legal personality) or one or more of the foregoing.

1.1.4 The headings are inserted for ease of reference only and shall not affect the construction of these Terms.

1.1.5 Any reference to a clause shall mean a clause of these Terms unless specifically stated otherwise.

1.2 Service Request

1.2.1 When wishing to instruct Amalga in relation to a Customer Project, the Customer shall submit to Amalga a Service Request no less than three (3) Working Days in advance of the anticipated start date for the Customer Project to which the Service Request relates.

1.2.2 The submission of a Service Request by the Customer shall in no way oblige Amalga to accept or reject the Service Request, unless and until Amalga has issued a valid Works Order.

1.3 Works Order

1.3.1 In response to a Service Request, Amalga may send to the Customer a completed Works Order, signed by an Amalga Authorised Representative.

1.3.2 Upon issue of a valid Works Order, the Customer shall sign and return to the Amalga Authorised Representative a copy of the Works Order.

1.3.3 Notwithstanding clause 1.3.2, if the Customer does not sign and return a copy of the Works Order to the Amalga Authorised Representative within twenty-four (24) hours of its issue by Amalga, the Customer will be deemed to have accepted the Works Order and Amalga shall be entitled to proceed with the carrying out of the Services; the Customer being deemed to have given its agreement to these Terms.

1.3.4 On issue of a valid Works Order, these Terms, the Works Order and the Supporting Documents shall constitute the Contract and Amalga shall supply and the Customer shall receive and pay for the Services in accordance with the Contract.

1.3.5 In the event of any inconsistency between the Works Order, the Supporting Documents and these Terms, these Terms shall prevail.

1.3.6 The Contract shall prevail over any terms and conditions proposed by the Customer (including but not limited to any terms and conditions contained within the Customer's Service Request, order, invitation to tender,

request for proposal or acceptance). No conduct by Amalga shall be deemed to constitute acceptance of any terms and conditions put forward by the Customer.

1.3.7 These Terms and (once issued), any Works Order or Supporting Documents may only be amended by express agreement in writing signed by the Authorised Representative of each of the parties.

1.4 Additional Services

1.4.1 If, during the course of providing Services under a Works Order, the Customer requests and Amalga agrees to provide additional services not specified in the relevant Works Order, then the Customer shall submit a supplemental Services Request and the provisions of clauses 1.2 and 1.3 shall apply mutatis mutandis to such additional services.

1.4.2 If Amalga agrees to provide additional services, Amalga will carry out such services, and the Customer shall pay for such services, in accordance with the terms of the applicable Contract as if they were Services as defined under these Terms.

1.5 Termination and Variation

1.5.1 Either party may terminate these Terms and/or any applicable Contract immediately by serving written notice to that effect on the other party if at any time any one or more of the following events occurs:

a) the other party makes any voluntary arrangement with its creditors or becomes bankrupt or enters administration or goes into liquidation (otherwise than for the purposes of solvent amalgamation or reconstruction); or

b) a security holder takes possession, or a receiver or administrative receiver is appointed, over all or any material part of the property or assets of the other party; or

c) anything analogous to any of the foregoing occurs to the other party under the law of any jurisdiction; or

d) the other party ceases to carry on business; or

e) the other party commits a material breach of any of the provisions of these Terms and in the case of a breach capable of remedy, fails to remedy that breach within thirty (30) days after being served with a written notice specifying the breach and requiring it to be remedied.

1.5.2 The rights to terminate any Contract or the Services given by this clause 1.5 shall not prejudice any other right or remedy of either

Party in respect of the breach concerned (if any) or any other breach.

1.5.3 No variation or alteration to the Contract shall be valid unless it is in writing and signed by the Amalga Authorised Representative and on behalf of the Customer.

1.6 Assignment/Sub-contracting

1.6.1 The Customer shall not be entitled to assign, sub-contract or otherwise dispose of any of its rights or obligations under any Contract without the prior written consent of Amalga, such consent may only be given by a director of Amalga.

1.6.2 Amalga may sub-contract its rights and obligations under any Contract at any time without the consent of the Customer.

1.6.3 Amalga may at any time and without seeking the consent of the Customer, assign its rights and obligations under the applicable Contract to a third party ("**Transferee**"). On condition that the Transferee undertakes for the benefit of the Customer to perform with effect from the date of assignment all of the obligations of Amalga under the applicable Contract in place of Amalga, the Customer shall accept such performance and shall release Amalga from any and all obligations and liability under the applicable Contract arising on or after the date of assignment.

1.7 Payment

1.7.1 Unless expressly stated to the contrary in the Works Order, Amalga may invoice for the Charges weekly in arrears.

1.7.2 The Customer shall pay each invoice submitted to it by Amalga within fourteen (14) days of the date of invoice or Prior Payment via pro forma as agreed. Time for payment shall be of the essence.

1.7.3 Without prejudice to any other remedy which Amalga may have, if any sums due under these Terms are not received by Amalga by the due dates referred to Amalga may:

a) claim interest under the Late Payment of Commercial Debts (Interest Act) 1998 from the due date until the overdue sums have been received by Amalga in cleared funds; and/or

b) suspend the provision of the Services or any other obligations required to be performed by Amalga under these Terms until such time as payment of the overdue sums (together with any interest) have been received by Amalga.

1.7.4 All sums due under these Terms are exclusive of Value Added Tax which (where applicable) will be paid to Amalga by the Customer in addition to the sums due.

1.7.5 Without prejudice to any other right or remedy it may have, Amalga reserves the right to set off any amount owing at any time to it by the Customer against any amount payable by Amalga to the Customer, whether under the applicable Contract or any Contract or contract between Amalga and/or any member of Amalga's Group its Group and the Customer.

1.8 Liability

1.8.1 If Amalga's performance of its obligations under these Terms is prevented or delayed by any act or omission of the Customer's or the Customer's agents, sub-contractors or employees or of the Airport or the Airport's agents, sub-contractors or employees, Amalga shall be entitled, in its absolute discretion, to terminate the relevant Contract and Amalga shall not be liable for any costs, charges or losses sustained or incurred by the Customer arising directly or indirectly from such termination and the Customer will pay to Amalga all additional time and expenses incurred by Amalga as a result of that act or omission at Amalga's then standard rates.

1.8.2 The Customer shall indemnify and keep indemnified Amalga from and against all costs, expenses (including, but not limited to, legal and other professional charges and expenses) losses, damages and other liabilities (of whatever nature, whether contractual tortious or otherwise) suffered or incurred by Amalga and arising out of or in connection with any acts or omissions of the Customer's agents, sub-contractors, employees or a member of the Customer's Group, any breach of the Contract by the Customer, any activities of the Customer under or in connection with the applicable Contract, any dispute as to the ownership of the Goods in relation to which the Services are provided or as to the person entitled in law to possession of the Goods or any claims, actions or demands made against Amalga by any third party as a result of any breach or alleged breach of the applicable Contract by the Customer.

1.8.3 Amalga shall not be liable to the Customer (whether by reason of any negligence by Amalga or any of Amalga's employees or sub-contractors, any breach of contract or any express or implied warranty, condition or other term, or under any indemnity given

by Amalga) for any loss of profits, or damage to reputation, or loss of anticipated savings, or loss of anticipated revenues, or loss of business opportunities, or loss of contracts, or loss of goodwill, or loss of or corruption of any data, or claim, action or demand made against the Customer by any third party, or indirect loss, damage, cost, expense, claim or other liability whatsoever; which arises out of or in connection with the applicable Contract.

1.8.4 Nothing in these Terms or the applicable Contract shall operate to limit or exclude either party's liability to the other for any death or personal injury caused by that party's negligence or any of that party's employees or agents, or for any other matter in respect of which liability cannot lawfully be limited or excluded.

Section 2 – Logistics, Support and Storage Services

2.1 Start and Duration

2.1.1 Subject to earlier termination under clause 1.5.1 or 2.1.2 if the Works Order contains Logistics, Support and Storage Services, these Terms shall apply from the Start Date and shall continue in force until the End Date or any extended term agreed between the parties.

2.1.2 Amalga may give to the Customer not less than 30 days' notice in writing to terminate the applicable Contract created by a Works Order or part thereof.

2.1.3 If Amalga chooses to terminate any one Contract (or part thereof) created by a Works Order under these Terms independently of the remaining parts or any other Contract, any Contracts or parts thereof created by Works Orders not terminated shall continue in full force and effect.

2.1.4 If the notice of termination is not specific as to which Works Order is being terminated, then all Contracts with the Customer shall terminate.

2.2 Amalga's Obligations

2.2.1 Amalga shall provide the Logistics, Support and Storage Services with reasonable skill and care and in accordance with good industry practice.

2.2.2 Amalga shall use reasonable endeavours to:

a) provide the Logistics, Support and Storage Services to the Customer in accordance in all material respects with the Supporting Documents;

b) perform the Services in accordance with and within the periods specified in the Works Order and meet any performance dates specified in the Works Order but any such dates shall be estimates only and time shall not be of the essence for performance of the Logistics, Support and Storage Services;

c) observe all health and safety rules and regulations and any other reasonable security requirements that apply at the Customer Site and/or Delivery Address and that have been communicated to it under clause 2.3.1e);

d) take precautions to safeguard the security of the Goods in accordance with the Supporting Documents;

e) comply with the operational procedures in relation to the Logistics, Support and Storage Services set out in the Supporting Documents; and

f) comply with the byelaws and/or other rules and regulations that may be applicable at the Airport.

2.3 Customer's Obligations

2.3.1 The Customer agrees to:

a) comply with the Customer's obligations referred to in the Supporting Documents in a timely manner and in accordance with any timescales expressly set out therein;

b) co-operate with Amalga in good faith in all matters relating to the provision of the Logistics, Support and Storage Services;

c) provide or procure in a timely manner such access, including security and vehicle access, to the Customer Site and/or the Delivery Address (or such other premises from where the Goods are to be collected or delivered) and such other facilities or resources, as may be reasonably requested by Amalga in order to enable Amalga to provide the Logistics, Support and Storage Services;

d) provide Amalga in a timely manner with such other information as Amalga may request in order to provide the Logistics, Support and Storage Services and ensure that this information is accurate and complete in all material respects;

e) inform Amalga of all health and safety rules and regulations and any other reasonable requirements that apply at the Customer Site and/or Delivery Address; and

f) comply with the operational procedures in relation to the Logistics, Support and Storage Services as set out in the Supporting Documents.

2.3.2 The Customer warrants:

a) that it is the owner of the Goods or if not the owner it has (and shall provide evidence that it has) the authority and consent of the owner as required to comply with its obligations under these Terms;

b) to provide full and accurate information to Amalga to enable it to provide the Logistics, Support and Storage Services;

c) that the Goods are as described to Amalga with regard to their nature, weight, quantity, condition and dimensions;

d) that Dangerous Goods accepted for Storage comply with all relevant statutory regulations for the time being in force concerning the Storage, carriage, packaging and labelling of such articles or substances;

e) that Amalga and any other contractors employed by Amalga may employ the services of any other contractor for the purpose of fulfilling the Contract in whole or in part and the name of every such other contractor shall be provided to the Customer on request.

2.3.3 The Customer acknowledges and agrees that it is the responsibility of the Customer to ensure that the Goods specified for Transit are correctly described and labelled. For the avoidance of doubt, Amalga reserves the right to refuse to remove, store, provide Transit services for or otherwise handle any Goods that Amalga deems not to be adequately described or labelled. Amalga shall not be liable for any loss, damage or inconvenience arising directly or indirectly out of any discrepancy, omission or error contained in the instruction for Transit.

2.3.4 The Customer shall and shall procure that its employees, agents and sub-contractors shall:

a) comply with all security requirements notified to it by Amalga including (but not limited to) producing upon request such identity documentation and/or vehicle documentation as may be notified to the Customer from time to time;

b) upon request and as soon as reasonably practicable, provide such information and documentation as Amalga may require in order to obtain the necessary TAPs on behalf

- of the Customer, its employees, agents and sub- contractors;
- c) when issued by Amalga with a TAP, keep such TAP safe and secure at all times and shall not allow any person other than the person to whom the TAP has been issued to use the TAP.
- 2.3.5 In the event that a Customer or any of its employees, agents or sub-contractors loses or damages any TAP which has been issued to the Customer by Amalga, the Customer shall notify Amalga immediately and the Customer shall pay to Amalga the sum of £500.00 in relation to each TAP which has been lost or damaged. The parties agree that this amount is a fair and reasonable representation of the costs which Amalga will incur in dealing with the lost TAP and in obtaining a replacement TAP.
- 2.3.6 On request by Amalga (and, in any event on termination of the applicable Contract for any reason), the Customer shall immediately return all TAPs which have been issued to the Customer by Amalga under the applicable Contract.
- 2.4 Handling of Goods and Delivery**
- 2.4.1 The Customer shall ensure that any Goods provided to Amalga for Transit shall be packed in accordance with such packing requirements as may be set out in the relevant Works Order.
- 2.4.2 The Customer shall at all times provide to Amalga all relevant information about the nature of the Goods and, if required by Amalga, procedures for dealing with the handling of the Goods and (if appropriate) information about their perishability and normal shelf life.
- 2.4.3 The Customer shall keep Amalga fully informed of any particular risk of which it is aware whether such risk be in relation to the Goods or their possible deterioration or damage or the hazardous nature of the Goods or any liability to contaminate or otherwise affect other documentation, goods, products, property or persons.
- 2.4.4 Amalga reserves the right at its complete discretion to refuse to remove, store, provide Transit services for or otherwise handle any article or substance which may in the reasonable opinion of Amalga be damaged, hazardous or dangerous in themselves or constituent parts or which article or substance could cause damage to other goods carried in respect of these Terms or which article or substance could cause damage or be dangerous to Amalga's employees, agents or sub-contractors or the property of Amalga including but not limited to its buildings, vehicles or equipment.
- 2.4.5 The Customer shall not knowingly or recklessly submit for Transit any dangerous or explosive article or substance. In the event that the Customer does submit dangerous or explosive articles or substances for Transit, the Customer shall be liable for and agrees to reimburse Amalga in respect of any loss or damage incurred by the Customer as a result of the Transit of such articles or substances. The Customer shall indemnify Amalga against all claims made against it for any loss or damage by any third party as a direct result of the presence of any such article or substance among the Goods of which the Customer is aware or should reasonably have been aware.
- 2.4.6 In relation to any Waste Removal Services, the Customer shall inform Amalga in advance in each case of the type of goods which Amalga is required to remove and any specific handling requirements.
- 2.4.7 Amalga will be deemed to have Delivered the Goods to the Delivery Address when the Goods are either:
- a) manually Delivered to the Customer's Site by Amalga's personnel; and/or
- b) off-loaded from Amalga's vehicle or Amalga's Moving Equipment (if the Services include Transit); and/or
- c) off-loaded from the vehicle or Moving Equipment of a third party.
- 2.4.8 The Customer acknowledges and agrees that the Customer is not required to be in attendance when Goods are Delivered by Amalga to the Customer's Site (as referred to in clause 2.4.7 above) or uploaded by Amalga into Amalga's vehicles at the Customer's Site provided proof of delivery shall be deemed to be acceptance of the Goods notwithstanding the absence of the Customer to sign as proof of delivery.
- 2.5 Dangerous Goods**
- Dangerous Goods must be disclosed by the Customer and if Amalga agrees to accept them for Storage such Goods must be accompanied by a full written declaration of their nature and contents and be properly and safely packed and labelled in accordance with any legislation for the time being in force for the Storage and carriage of such articles or substances and the Customer shall, whilst the Dangerous Goods are being Stored by Amalga, keep Amalga 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 or handling of Dangerous Goods. The Customer shall, whilst the Dangerous Goods are being Stored by Amalga, keep Amalga informed as to its recommendations on the handling and Storage of such Goods including all health and safety recommendations and prior to arranging dispatch of the Dangerous Goods, the Customer shall provide Amalga with such information in writing in relation to the Dangerous Goods as will enable Amalga to know the identity of the substances comprising the Dangerous Goods, the nature of the hazards created by such substances, and the action to be taken in an emergency. Amalga shall be entitled to disclose the information supplied by the Customer to its employees, agents and other contractors referred to in clause 2.4.2, and any relevant Government department.
- 2.6 Notice of Delivery or Collection**
- The Customer shall give Amalga not less than 48 hours' notice of its intention to deliver or remove Goods at the premises of Amalga.
- 2.7 Receipt of Goods**
- 2.7.1 Following acceptance of the Goods for Storage Amalga shall if required provide the Customer with a receipt but no such document shall be evidence of the condition or the correctness of the declared nature, property, chemical composition, quantity, quality, or weight of the Goods at the time they are received by Amalga and the burden of proving the condition of the Goods on receipt by Amalga and that the Goods were of the nature, property, chemical composition, quantity, quality or weight declared in the relevant document shall rest with the Customer.
- 2.7.2 Amalga shall notify the Customer of any pre-existing damage to and/or deficiency in the Goods to be Stored, within a reasonable time of Amalga becoming aware of such damage or deficiency. Such Goods shall, in the absence of any express agreement to the contrary between the Customer and Amalga, be returned to the Customer at the Customer's expense.
- 2.8 Termination of Storage**
- 2.8.1 Notwithstanding clause 1.5 either Amalga or the Customer may at any time give not less than 21 clear days' notice in writing to the other of its intention to terminate the Contract and notwithstanding that Amalga may have released the Goods before the expiry of such notice, all charges shall be payable to the date when the notice would have expired.
- 2.8.2 Amalga may require the removal of the Goods or any part thereof, forthwith, if in Amalga's opinion:
- a) the Customer's financial position becomes unsatisfactory or if the Customer ceases to pay its debts in the ordinary course of business or cannot pay its debts as they become due, or (being a company) is deemed to be unable to pay its debts or has a winding up petition issued against it or a receiver appointed of all or any part of its assets, or if a proposal is made for a composition with creditors or scheme of arrangement or for an administrator to be appointed in respect of all or any part of the business or assets of the Customer or (being an individual) commits an act of bankruptcy or has a bankruptcy petition issued against him, or the Customer is in breach of any of its obligations arising under the Contract;
- b) the Storage of Goods poses a risk to the health and safety of Amalga, its employees, agents or any third party or to Amalga's property or any third party property; and/or
- c) the continued Storage of the Goods will result in the Goods perishing or otherwise deteriorating and/or will cause damage to other goods or property.
- 2.8.3 If the Goods or any part thereof are not removed after notice is given by Amalga to the Customer in accordance with clauses 2.8.1 and 2.8.2 above, then Amalga may, at its absolute discretion, sell the Goods after the lapse of a reasonable period of time after notice is given by Amalga of its intention to sell the Goods or part thereof.
- 2.9 Revision of Storage Charges and Conditions of Storage**
- Notwithstanding the provisions of clauses 1.5 and 2.10, Amalga's charges and the terms on which Goods are stored may be revised by Amalga from time to time and any such revision shall not become effective until the expiry of twenty-one days from the date notice of proposed revision is given to the Customer.
- 2.10 Charges and payment**
- 2.10.1 In consideration of the provision of the Logistics, Support and Storage Services and/or the Waste Removal Services and/or Storage Services, the Customer shall pay to Amalga the Charges on the basis of a cost

per activity performed, at the rates set out in the Works Order and in compliance with clause 1.7.

2.10.2 Goods accepted for Storage during any calendar week (Monday to Sunday both inclusive) shall be charged for as though they were received on the first day of such week.

2.10.3 Should the delivery of Goods be postponed or cancelled by the Customer, Amalga shall be entitled to recover from the Customer all expenses incurred by Amalga and all rental charges in respect of space reserved for such Goods.

2.11 Parties and Sub-Contracting

Amalga contracts for itself and as agent of and trustee of its employees, agents and all other contractors and every reference in these Terms to the "Amalga" shall be deemed to include every other such contractor, employees and agent with the intention that they shall have the benefit of the contract and collectively and together with Amalga be under no greater liability to the Customer or any other party than is Amalga hereunder.

2.12 Fraud

Amalga shall not in any circumstances be liable in respect of Goods where there has been fraud on the part of the Customer or the owner, or the employees or agents of either, in respect of those Goods, unless the fraud has been contributed to by the complicity of Amalga or of any employee of Amalga acting in the course of his employment.

2.13 Indemnity to Amalga

2.13.1 The Customer shall indemnify Amalga against:

a) all liabilities and costs incurred by Amalga (including but not limited to claims, demands, proceedings, fines, penalties, damages, expenses and loss of or damage to the place of storage and to other goods Stored) by reason of any error, omission, mis-statement or misrepresentation by the Customer or other owner of the Goods or by any employee or agent of either of them, insufficient or improper packing, labelling or addressing of Goods or fraud as in clause 2.12;

b) all claims and 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 Storage of Dangerous Goods and claims

made upon Amalga by HM Customs and Excise in respect of dutiable goods consigned in bond) in excess of the liability of Amalga under these Terms in respect of any loss or damage whatsoever to, or in connection with, 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 Amalga, its employees, agents or subcontractors.

2.14 Time Limits for Claims

2.14.1 All claims for damage to or physical loss or mis-delivery of or failure to release any Goods and any claim referred to in clause 2.18.1b) shall be made in writing by the Customer within 7 days after release of the Goods alleged to be damaged or, in the case of Goods alleged to be lost or mis-delivered or which Amalga fails to release, within 7 days after the time when the Goods should in the ordinary course of events have been released and Amalga shall be under no liability unless such claim is made within the time stipulated. Provided that if the Customer proves that:

a) it was not reasonably possible for the Customer to advise Amalga or make a claim in writing within the time limit applicable, and

b) such advice or claim was given or made within a reasonable time, Amalga shall not have the benefit of the exclusion of liability afforded by this clause.

2.14.2 Amalga shall in any event be discharged from all liability whatsoever and howsoever arising in respect of the Goods unless suit is brought within one year of the date when the Goods were released or should, in the ordinary course of events, have been released.

2.14.3 In the computation of time where any period provided by this clause 2.14 is 7 days or less, only Working Days shall be included.

2.15 Lien

2.15.1 Amalga shall have a general lien against the Customer, where the Customer is the owner of the Goods, for any monies whatever due from the Customer to Amalga. If such a lien is not satisfied within a reasonable time, Amalga may, at its absolute discretion sell the Goods, or part thereof, as agent for the Customer and apply the proceeds towards the monies due and the expenses of the retention, insurance and sale of the Goods and shall, upon accounting to the Customer for any balance remaining, be discharged from all liability whatever in respect of the Goods.

Where the Customer is not the owner of the Goods, Amalga shall have a particular lien against the said owner, allowing Amalga to retain possession, but not to dispose of, the Goods against monies due from the Customer in respect of the Goods.

2.16 Liability for Goods

2.16.1 Amalga shall not be liable for any loss, mis-delivery, delay of or damage to the Goods whilst they are not in Amalga's possession or control including (but not limited to) any loss, mis-delivery, delay of or damage to the Goods during the course of the Escort Services.

2.16.2 Notwithstanding any other provision of these Terms, Amalga shall not be liable for loss, mis-delivery, delay of or damage to the Goods whilst in Transit where it is proved such loss, mis-delivery, damage or delay has arisen from an act or omission of the Customer, its employees or agents or any failure of the Customer to comply with its obligations under these Terms.

2.16.3 Subject to clause 2.18 or clause 2.19 (as applicable), Amalga shall be responsible during Transit and/or for all losses and damage to Goods due to the wilful or negligent acts or omissions of Amalga or its employees, agents or subcontractors.

2.17 Liability for Storage

2.17.1 The Customer shall be deemed to have elected to accept the terms set out in clause 2.16 unless, before the Goods are Stored, the Customer has agreed in writing that Amalga shall not be liable for any loss or mis-delivery of or damage to or in connection with the Goods however or whenever caused and whether or not caused or contributed to directly or indirectly by any act, omission, neglect, default or other wrongdoing on the part of Amalga, its employees, agents or subcontractors.

2.17.2 Subject to these Terms and to clause 2.18 or 2.19 (as applicable), Amalga shall be liable for:

a) physical loss, mis-delivery of or damage to living creatures, bullion, money, securities, stamps, precious metals or precious stones only if:

(i) Amalga has specifically agreed in writing to Store any such items; and

(ii) the Customer has agreed in writing to reimburse Amalga in respect of all additional costs which result from the Storage of the said items: and

(iii) the loss, mis-delivery or damage is occasioned during Storage and is proved to be due to the negligence of Amalga, its employees, agents or sub-contractors.

b) physical loss, mis-delivery of or damage to any other Goods occasioned during Storage unless the same has arisen from, and Amalga has used reasonable care to minimise the effects of:

(i) Act of God;

(ii) any consequences of war, invasion, act of foreign enemy, hostilities (whether war or not), civil war, rebellion, insurrection, terrorist act, military or usurped power or confiscation, requisition, or destruction or damage by or under the order of any government or public or local authority;

(iii) seizure or forfeiture under legal process;

(iv) error, act, omission, mis-statement or misrepresentation by the Customer or other owner of the Goods or by employees or agents of either of them;

(v) inherent liability to wastage in bulk or weight, faulty design, latent defect or inherent defect, vice or natural deterioration of the Goods;

(vi) leakage or deficiency of Goods of a perishable or leaky nature, moth, vermin, insects, atmospheric or climatic causes;

(vii) insufficient or improper packing;

(viii) insufficient or improper labelling or addressing;

(ix) riot, civil commotion, strike, lockout, general or partial stoppage or restraint of labour from whatever cause;

(x) any other cause beyond the reasonable control of Amalga.

2.17.3 Amalga shall not in any circumstances be liable for loss of or damage to Goods arising after Storage of such Goods has ended, whether or not caused or contributed to directly or indirectly by any act, omission, neglect, default or other wrongdoing on the part of Amalga, its employees, agents or sub-contractors.

2.18 Limitation of Liability

2.18.1 Except as otherwise provided in these Terms, the liability of Amalga in respect of claims for physical loss, mis-delivery of or damage to

Goods, howsoever arising, shall in all circumstances be limited to the lesser of:

- a) the value of the relevant Goods actually lost, mis-delivered or damaged; or
- b) the cost of repairing any damage or of reconditioning the relevant Goods; or
- c) a sum calculated at the rate of £100 Sterling per tonne on the gross weight of the relevant Goods actually lost, mis-delivered or damaged;

and the value of the relevant 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:

- d) in the case of loss, mis-delivery of or damage to a part of the Goods the weight to be taken into consideration in determining the amount to which Amalga'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 Goods;
- e) nothing in this clause shall limit the liability of Amalga to less than the sum of £10;
- f) Amalga shall be entitled to proof of the weight and value of the whole of the Goods and of any part thereof lost, mis-delivered or damaged.

2.18.2 The liability of Amalga 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 Goods, shall not exceed the amount of the charges in respect of the Goods or the amount of the claimant's proven loss, whichever is the lesser.

2.19 Optional Additional Liability Cap

2.19.1 Notwithstanding clause 2.18 above, where indicated on the Works Order that this clause 2.19 shall apply, Amalga's total liability for lost or damaged Goods shall not exceed the sum specified as the cap on liability in the Works Order provided that the Customer has, at the time of issue of the Work Order, provided Amalga with any additional information requested by Amalga prior to the commencement of the Services.

Section 3 – Supply of Staff Services

3.1 Supply of Staff

3.1.1 Provided a Works Order has been issued, the Start Date for the purpose of the Supply of Staff Services under this Section 3 shall be the commencement date of the Assignment and the Contract shall remain in force for the period specified in the Works Order unless terminated or varied under clauses 1.5 or 3.11.

3.1.2 Amalga may at any time without notifying the Customer make any changes to the Services to be provided during the Assignment which are necessary to comply with applicable safety or other statutory requirements and which do not materially affect the nature or quality of the Assignment. The Customer will be notified of any necessary changes.

3.2 Duties

3.2.1 The Customer shall be responsible for specifying its requirements and timeframes and will provide Amalga with all information necessary to ensure that Amalga may supply the Supply of Staff Services to the Customer's satisfaction; including but not limited to details of the dates and anticipated duration of the Assignment, the services to be provided (including the location and the hours to be worked, the potential health and safety risks together with the steps taken to prevent or control such risks), the training, any necessary qualifications or authorisations and any anticipated expenses payable.

3.2.2 For the duration of the Assignment Amalga shall use reasonable endeavours to procure that the Employee supplied to the Customer is suitable to provide the Supply of Staff Services with reasonable care, skill and ability and has the requisite technical competence; and that the Employee, subject to any absences for illness or holiday, shall devote such time and attention as may be reasonably necessary for the proper performance of the Supply of Staff Services.

3.2.3 Neither of the parties shall hold itself (and shall procure that the Employee shall not hold themselves) out as having authority to bind one another (Amalga and or the Customer) in any way in relation to third party arrangements.

3.2.4 Subject to compliance with clause 5.2, the Customer shall at its own expense ensure that the Employee is afforded sufficient access to any of the Customer's or third parties' premises, materials, manuals, personnel, data and other information and use of any equipment which is reasonably

necessary for the satisfactory completion of the Supply of Staff Services.

3.2.5 Whilst the Employee is working at the Customer's or third parties' premises, the Customer shall provide the Employee with a suitable place of work and such materials in a good condition and sufficient for the purposes for which they are required and the Customer should ensure that the Employee is made aware and abides by the rules and regulations of the Customer's or third parties' site. Any insubordination, disobedience, performance, conduct or capability matter, however, should be reported to Amalga and not dealt with by the Customer directly. Amalga will remain responsible for any action in that regard, including disciplinary proceedings and the Customer shall provide relevant information and evidence as reasonably required to enable Amalga to undertake appropriate investigation and disciplinary action.

3.2.6 The Customer shall advise Amalga of all health and safety matters about which Amalga is required to inform the Employee, and the Customer shall carry out all health and safety risk assessments relevant to the Assignment.

3.2.7 For the duration of the Assignment and whilst the Employee is working at the Customer's or third parties' premises the Customer shall undertake to:

- a) ensure that the health and safety standards required by all applicable regulations and guidelines are observed; and
- b) notify Amalga and the Employee of any specific risks to health and safety known to it and what steps the Customer has taken to prevent or control such risks; and
- c) confirm that it knows of no reason why it would be detrimental to the interests of the Employee to undertake the Supply of Staff Services.

3.2.8 The Customer shall provide, at its own cost, the Employee with health and safety training and shall provide all further training required.

3.2.9 The Customer shall provide, at its own cost, the Employee with any and all necessary personal protective equipment and shall ensure that the same is replaced as required.

3.2.10 The Customer undertakes to assist Amalga in complying with Amalga's duties under the Working Time Regulations by supplying any relevant information about the Assignment requested by Amalga and the Customer will not do anything to cause Amalga to be in

breach of its obligations under such Regulations. Where the Customer requires or may require the services of an Employee for more than 48 hours in any week, the Customer must notify Amalga of this requirement before the commencement of that week. Only Employees who consent to working over 48 hours in any week will be permitted to do so.

3.2.11 The Customer undertakes to supervise the Employee sufficiently to ensure the Customer's satisfaction with the Employee's standards of workmanship.

3.2.12 The Customer warrants that it shall not request Amalga to supply an Employee to perform duties normally undertaken by staff who are participating in an official strike or other industrial action.

3.2.13 When providing Supply of Staff Services, Amalga does so as an employment business pursuant to the Employment Agencies Act 1973 and the relevant statutory instruments.

3.3 Time Sheets

3.3.1 Amalga shall provide the Customer with timesheets on which to record the hours worked by the Employee. The Customer will provide these timesheets to the Employee for completion and signature.

3.3.2 The Customer shall send to Amalga the signed timesheets verifying the Employee's working hours that week by close of business each Friday or at the end of the Assignment where it is for a period of one week or less or is completed before the end of a week.

3.3.3 It is the Customer's responsibility to ensure that the recorded hours are a true reflection of the hours worked by the Employee but failure by the Customer to sign the timesheets will not negate the Customer's obligation to pay the Charges in respect of hours worked by the Employee nor will dissatisfaction with the Employee's performance.

3.3.4 In the event of a dispute in respect of the hours worked between the Customer and the Employee the Customer shall inform Amalga in writing within 24 hours of such dispute arising and the Customer shall provide timely assistance to Amalga if it needs to verify the hours claimed and establish what hours (if any) were worked.

3.4 Remuneration

3.4.1 Amalga will be responsible for payment of the Employee's remuneration, Amalga and the

- Employee's National Insurance Contributions and PAYE Income Tax where applicable.
- 3.4.2 Under no circumstances will the Customer discuss the Charges with the Employee or make payment to the Employee direct.
- 3.5 Charges**
- 3.5.1 The Customer agrees to pay Amalga for all work performed by the Employee in the provision of the Supply of Staff Services by reference to the Charges set out in the Works Order.
- 3.5.2 The Employee's hourly charge rate shall be agreed between Amalga and the Customer on an Assignment by Assignment basis and the charge rate applicable to the Employee shall be stated in the Works Order.
- 3.5.3 In order to achieve the most suitable Employee hourly charge rate, the Customer shall endeavour to provide Amalga before the issue of the Works Order and the commencement of the Assignment all relevant information to the anticipated duration of the Assignment, the nature of the services to be provided (including location and required hours, any potential health and safety risks), together with training, qualification and authorisation requirements.
- 3.5.4 The Charges are calculated as a multiple of the number of hours, days, weeks (as appropriate) worked by the Employee during the Assignment and the relevant charge rate stated in the Works Order.
- 3.5.5 Amalga shall be entitled to vary the Charges from time to time by giving not less than 14 days written notice to the Customer.
- 3.5.6 Invoices, accompanied by copies of any available supporting timesheet(s) or other such evidence, for the work performed by the Employee shall be presented to the Customer for payment on a weekly basis and shall be payable in compliance with clause 1.7.
- 3.5.7 Payment by the Customer of the Charges shall constitute acceptance of the level of the Charges for the Supply of Staff Services and the accuracy of any accompanying copy timesheet(s) or other such evidence.
- 3.5.8 Chargeable hours worked by an Employee shall commence on the Employee's arrival at site except where the Customer requires an Employee to travel, for example from site to site, in which case travel time will be charged at the Employee's applicable hourly rate of Charges.
- 3.5.9 The Customer shall pay the Charges of Amalga relating to the Employee's authorised break(s), as noted on the Employee's timesheet or other such evidence, unless otherwise expressly agreed in writing.
- 3.5.10 The Customer shall reimburse all reasonable properly and necessarily incurred expenses of the Employee (plus VAT if applicable) in the provision of the Supply of Staff Services to Amalga subject to production of receipts or other appropriate evidence of payment.
- 3.5.11 Where the Customer requests Amalga to provide the Employee with tools, plant, materials or equipment, such as a mobile telephone, Amalga shall charge the Customer for the use of such equipment at a rate to be agreed between Amalga and the Customer prior to Amalga supplying the equipment.
- 3.6 Insurance and Responsibility for Employees**
- 3.6.1 The Employee is employed by Amalga under a contract of employment.
- 3.6.2 Amalga shall ensure that the relevant Insurance Policies are taken out and maintained throughout the Assignment.
- 3.6.3 Notwithstanding the Employee's employment status the Customer for the duration of the Assignment agrees to be responsible for:
- a) provision of adequate Contractors All Risk, Professional Indemnity, Employer's and Public Liability Insurance cover for the Employee and will indemnify Amalga against any liability thereunder; and
- b) all acts, errors or omissions of each Employee, whether wilful, negligent or otherwise; and
- c) compliance in all respects with all statutes relating to the Employee including the employment regulations, the Health and Safety At Work Act, its statutory instruments and guidelines and codes of practice to which the Customer is ordinarily subject in respect of its own employees and shall indemnify Amalga for any causes of action or complaints arising from the Customer's breach of the regulations or treatment of the Employee; and
- d) notwithstanding the provisions of clause 3.6.3c), the Customer will not be responsible for any contractual obligations as set out in the Employee's contract of employment.
- 3.6.4 The Customer shall be responsible for taking all steps necessary or desirable for the health, safety and welfare of the Employee when performing services at any premises of the Customer or third parties as if the Employee (strictly for the provision of this clause) were an Employee of the Customer and the Customer shall indemnify Amalga against any failure to do so.
- 3.7 Non-Solicitation**
- 3.7.1 The Customer shall not without the prior written consent of Amalga at any time during the Assignment or for the Relevant Period or Restricted Period following the termination of the Assignment or Agreement solicit or entice away from Amalga the Employee or engage or offer to employ or engage in any capacity any person who is, or has been engaged, by Amalga in any capacity or in the provision of the Services to the Customer.
- 3.7.2 Where Amalga grants consent to the permanent engagement of the Employee under clause 3.7.1 the Customer agrees to pay to Amalga the Introduction Fee under clause 3.8.1. The amount will be payable by the Customer as a precondition of Amalga's written consent.
- 3.7.3 The Customer shall procure that it (its group company and any and every subsidiary company) should observe the restrictions contained in clause 3.7.1.
- 3.7.4 In the event that the Customer shall engage the Employee without such written consent and or in breach of clause 3.7.1 the Customer shall be liable to pay Amalga the Transfer Fee under clause 3.9.1.
- 3.8 Introduction Fees**
- 3.8.1 Subject to the provisions of clause 3.8.1 should an Employee be engaged by the Customer within the Relevant Period then the Customer will pay to Amalga a sum amounting to the Employee's standard Monday to Friday hourly charge rate multiplied by 400 (four hundred) (plus VAT if applicable).
- 3.8.2 The Customer agrees to pay the sum payable under clause 3.8.1 in accordance with clause 1.7.
- 3.9 Transfer Fees**
- 3.9.1 The Customer shall be liable under clause 3.7.4 to pay to Amalga 35% (thirty five percent) of the Employee's gross annual remuneration (plus VAT if applicable) at the rate payable by Amalga immediately before the Employee commenced the Assignment.
- 3.9.2 The sum payable under clause 3.9.1 will be due and payable by the Customer irrespective of the duration of any Assignment.
- 3.9.3 The Customer agrees to pay the sum payable under clause 3.9.1 in accordance with clause 1.7.
- 3.9.4 If clause 3.9.1 of this Agreement is prohibited by law or judged by a court to be unlawful, void or unenforceable for any reason then clause 3.8.1 shall apply in substitute as the applicable fee due for payment by the Customer.
- 3.10 Capability and Replacement**
- 3.10.1 The Customer shall satisfy itself that the Employee has the overall capability to perform the Supply of Staff Services required under the Assignment and the Customer shall notify Amalga of any complaints concerning the Employee's performance or conduct as soon as knowledge of such matters of concern should arise. Amalga will accept no responsibility for information relating to the Employee which is outside of its knowledge.
- 3.10.2 The Customer shall notify Amalga immediately and without delay and in any event within 24 hours in writing if the Employee fails to attend work or notifies the Customer that he is unable to attend work for any reason.
- 3.10.3 Should the Employee be unable to provide the Supply of Staff Services during the Assignment for reason of illness or injury the Customer shall advise Amalga of that fact as soon as reasonably practicable and the Customer shall assist Amalga in respect of its obligations under the statutory sick pay scheme by providing to Amalga evidence of the Employee's illness or injury as Amalga may reasonably require from the Employee.
- 3.10.4 No Charges shall be payable by the Customer in accordance with clause 3.5 in respect of any period during which the Supply of Staff Services are not provided under the Assignment save for in event of the Customer failing to provide notice of variation to the Supply of Staff Services as stated in clause 3.11.
- 3.10.5 In addition to the provisions of clause 1.5, the Customer shall notify Amalga in writing if it should wish to terminate the Supply of Staff Services of the Employee and shall provide a clear written account of the difficulties encountered.
- 3.10.6 Amalga may offer to appoint a suitably qualified and skilled substitute employee to perform the Supply of Staff Services under

the Assignment instead of the Employeea) either on a temporary or permanent basis.

- 3.10.7 The provision of a replacement by Amalga shall in no way amount to an admission that the work carried out by the Employee was not carried out with reasonable care and skill.

3.11 Variation of Supply of Staff Services

Without prejudice to clause 1.5.3, should the Customer wish to make any variation to the Supply of Staff Services such as reducing the hours worked by the Employee each day, the number of days worked by the Employee each week or the number of Employees providing the Supply of Staff Services, the Customer shall provide Amalga with 14 days' written notice before any such variation comes into effect.

Section 4 – Installation and Strip-out Services

4.1 Commencement

The Start Date for the purpose of Installation and Strip-out Services under this Section 4 shall be the date specified in the Works Order.

4.2 Amalga's Obligations

- 4.2.1 Amalga shall use reasonable skill and care in the performance of the Installation and Strip-out Services and to carry out the such services in compliance with the Works Order and any specification provided.

- 4.2.2 Amalga shall use reasonable endeavours to meet any performance date specified in the Installation and Strip-out Services, but any such dates shall be estimates only and time shall not be of the essence for performance of any of the Installation and Strip-out Services.

- 4.2.3 Amalga shall use reasonable endeavours to observe all health and safety rules and regulations, and any other reasonable security requirements that apply to the Customer Site and that have been communicated to Amalga under clause 4.3.1(f), provided that it shall not be liable under this Agreement if, as a result of such observations, it is in breach of any of its obligations under the Agreement.

- 4.2.4 Amalga shall carry out all the Installation and Strip-out Services between the hours of 9.00 am to 5.00 pm Monday to Friday (excluding public holidays) except where the Customer requires Amalga to work outside of these hours at such additional cost as the parties shall agree.

- 4.2.5 Amalga shall not be responsible for and accepts no liability in respect of:

any making good; and/or
asbestos testing or removal.

4.3 Customer's Obligations

- 4.3.1 The Customer shall:

- a) obtain and maintain all necessary licences and consents and comply with all relevant legislation in relation to the Customer Site before the Start Date;
- b) provide Amalga, its employees, agents and sub-contractors with access to the Customer Site as well as access to any other property and land (including any access required to property and land owned by third parties) reasonably required by the Supplier to conduct the Installation and Strip-out Services;
- c) co-operate with Amalga in all matters relating to the Installation and Strip-out Services and inform Amalga whether it must allow for any confined space entry, high pressure water jetting or pre-cleansing or any other things Amalga will need notice to provide which will be requires as part of the Installation and Strip-out Services;
- d) provide Amalga, in a timely manner, such materials and information as Amalga may require to ensure it is able to carry out the Installation and Strip-out Services;
- e) be responsible (at its own cost) for preparing the Customer Site to enable the Installation and Strip-out Services to be conducted including identifying, monitoring removing and disposing of any hazardous materials as Amalga may require in accordance with all applicable laws, before and during the supply of the Installation and Strip-out Services;
- f) inform Amalga of all health and safety rules and regulations and any other reasonable security requirements that apply at the Customer Site; and
- g) ensure that all of the Customer's equipment (where it is required by Amalga) is in good working order and suitable for the purposes for which it is used and conforms to all relevant standards and requirements.

4.4 Liability

- 4.4.1 If Amalga's performance of the Installation and Strip-out Services is prevented or delayed by any act or omission of the Customer its employees, agents or sub-contractors or failure of the Customer to perform any of its obligations under this Agreement, Amalga shall not be liable for any costs, charges or losses sustained or incurred by the Customer arising

directly or indirectly from such prevention or delay.

- 4.4.2 The Customer shall be liable to pay to Amalga on demand, all reasonable costs, charges or losses sustained or incurred by Amalga arising directly or indirectly from the Customer's fraud, negligence, failure to perform or delay in performance of any of its obligations under this Agreement, subject to Amalga confirming such costs, charges and losses to the Customer in writing.

- 4.4.3 In respect of the Installation and Strip-out Services, all terms implied by statute or common law are, to the extent permitted by law, excluded from this Agreement.

- 4.4.4 Nothing in this Agreement shall limit or exclude Amalga's liability for:

- a) death or personal injury resulting from negligence;
 - b) any damage or liability incurred by the Customer as a result of fraud or fraudulent misrepresentation by Amalga; or
 - c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).
- 4.4.5 Subject to clauses 4.4.3 and 4.4.4 Amalga shall not be liable for:
- a) damage caused as a result of gaining access or egress to the Customer Site;
 - b) loss of use;
 - c) loss or corruption of data or information;
 - d) any consequential, indirect or pure economic loss, costs, damages, charges or expenses.

- 4.4.6 Amalga's total liability in respect of the Installation and Strip-out Services in contract, tort or otherwise arising in connection with the Services shall be limited to £5,000,000.

4.5 Insurance

The Customer shall take out and maintain appropriate insurance cover in respect of its risks and liabilities in procuring the carrying out the Installation and Strip-out Services and provide copies of such insurance policies and evidence of such insurance being maintained as Amalga shall reasonably demand. The Customer shall not do or omit to do anything to make such insurances void or voidable.

Section 5 – General Provisions

5.1 Confidentiality

- 5.1.1 The Customer shall not either during the term or at any time after the termination of the Contract use or disclose to any firm, person or company any Confidential Information.

- 5.1.2 The restriction under clause 5.1.1 shall not apply to any use or disclosure authorised by the parties or required by law; or any information which is already in, or comes in, to the public domain otherwise than through the parties unauthorised disclosure.

5.2 Data Protection

- 5.2.1 The Customer acknowledges that it may be necessary for Amalga and any Group Company of Amalga, any external agent of Amalga and/or any legal or other professional adviser of Amalga to process personal data and information including sensitive personal data as defined by the Data Protection Act 1998 or any "special category of data" as defined in the General Data Protection Regulations 95/46/EC) relating to the Customer and or the Customer's employees, workers or contractors for the purposes of the administration management and execution of obligations in relation to the Contract and for compliance with applicable procedures, laws and regulations as appropriate. On the same basis such personal information may be transferred to other offices of Amalga or to other third parties whether or not outside the European Economic Area for administration purposes and other purposes in connection with the Contract where it is necessary or desirable for Amalga to do so and insofar as is required the Customer consents to such processing.

- 5.2.2 The Customer warrants and undertakes that it has complied with and will fully comply with all data protection laws including but not limited to the Data Protection Act 1998 the General Data Protection Regulations 95/46/EC in the processing of personal, sensitive or special category data connected to the Contract.

- 5.2.3 The Customer agrees to indemnify and keep indemnified and defend at its own expense Amalga against all costs, claims, damages or expenses incurred by Amalga or for which Amalga may become liable due to any failure by the Customer or its employees or agents to comply with any of its data protection processing obligations under the Contract.

5.3 Force Majeure

Amalga will not be liable for, or be deemed to be in breach of these Terms as a result of, any delay in performing or failure to perform any of Amalga's obligations under these Terms where that delay or failure is caused by any circumstances beyond Amalga's reasonable control including, but not limited to, an Event of Force Majeure.

5.4 Consequences of Termination

5.4.1 Any termination of any Contract shall be without prejudice to any other rights or remedies a party may be entitled to under these Terms or at law and shall not affect any accrued rights or liabilities of either party nor the coming into or continuance in force of any provision of these Terms which is expressly or by implication intended to come into or continue in force on or after such termination including (but not limited to) clauses: 1.5.2,1.3.11 and 4.5 (as applicable).

5.4.2 On termination (for whatever reason) and/or expiry of these Terms the Customer shall immediately pay to Amalga any outstanding unpaid invoices and interest due to Amalga. Amalga may submit invoices for any Services that it has provided but not invoiced. The Customer must pay these invoices within 30 days of the date of invoice.

5.4.3 The termination of any Contract shall not affect any provisions which are intended to operate after termination including but not limited to these General Provisions (Section 5), Payment (clause 1.7), Insurance and Liability (clause 3.6), Non-Solicitation (clause 3.7), Introduction Fees (clause 3.8), Transfer Fees (clause 3.9) and Liability (clauses 1.8, 2.16 and 2.18).

5.5 Exclusion of Third Party Rights

Unless expressly stated in this Agreement, nothing in this Agreement shall confer any rights on any person under the Contracts (Rights of Third Parties) Act 1999.

5.6 Waiver

5.6.1 No delay or failure on the part of either party in enforcing any provision in these Terms shall be deemed to operate as a waiver or create a precedent or in any way

prejudice that party's rights under these Terms, nor shall any single or partial exercise of any right or remedy in any circumstances preclude any other or further exercise of it or the exercise of any other right of remedy.

5.6.2 The rights and remedies provided in these Terms are cumulative and are additional to any rights or remedies provided by law.

5.7 Severability

If any provision in these Terms is declared void or unenforceable by any court or other body of competent jurisdiction, or is otherwise rendered so by any applicable law, that provision shall to the extent of such invalidity or unenforceability be deemed severable and all other provisions of these Terms not affected by such invalidity or unenforceability shall remain in full force and effect.

5.8 Notices

5.8.1 Any notice under these Terms shall be in writing and shall be sent by pre-paid, first class post, hand delivery or fax to the address/number for the relevant party as stated in these Terms or otherwise notified to the other party for this purpose. Any such notice shall be deemed to have been duly received:

- a) if despatched by first class, recorded delivery post 48 hours from the time of posting (subject only to any delays caused by industrial action affecting the postal service);
- b) if delivered by hand at the time of actual delivery;
- c) if despatched by fax 24 hours after the time of the despatch;

provided in each case that if the deemed receipt time occurs on a day that is not a Working Day or after 5.00pm on a Working Day, then the notice shall not in fact be deemed to have been received until 10.00am on the next following Working Day (such times being local time at the address of the recipient).

5.9 Entire Terms

5.9.1 These Terms shall constitute the entire Terms and understanding, and shall supersede any previous term(s), between the parties in connection with the subject matter of these Terms.

5.9.2 The Customer acknowledges and agrees that the Customer has not been induced to enter into these Terms in reliance upon, and in connection with these Terms does not have any remedy in respect of, any representation or other statement or promise of any nature whatsoever other than as expressly set out in these Terms.

5.10 Dispute Resolution

5.10.1 All and any disputes or differences arising out of or in connection with these Terms, including any dispute or difference in respect of the breach, termination or invalidity of these Terms ("**Dispute**") shall be resolved and finally settled in a manner provided for in this clause 5.10.

5.10.2 The parties will seek in good faith to resolve any Dispute by negotiation without recourse to proceedings. In the event of a Dispute either party may serve written notice ("**Dispute Notice**") on the other proposing that the parties resolve the Dispute by negotiation. Within 10 days after service of the Dispute Notice, one or more representatives of each party at senior director level shall meet in good faith to attempt to resolve the Dispute by agreement.

5.10.3 If the Dispute is not resolved within 21 days of the Dispute Notice, either party may upon written notice to the other refer the Dispute to mediation in accordance with clause 5.10.4.

5.10.4 If any Dispute arises and is not resolved under the procedure set out in clauses 5.10.2 and 5.10.3, the parties will attempt to settle it by mediation under the auspices of the ADR Group. To initiate the mediation a party shall give written notice ("**Mediation Notice**") to the other party requesting a mediation. The mediator shall be agreed upon within 60 days of the date of the Mediation Notice, failing which the mediator shall be appointed by the President of the Law Society of England and Wales.

5.10.5 If the parties cannot agree on any issue as to the conduct of the mediation (other than as to the appointment of the mediator), then at the request of either party the ADR Group will decide the issue.

5.10.6 If the Dispute is not resolved within 7 days of starting the mediation or within such further period as the parties may agree in writing, either party may then give written notice to the other to refer the Dispute to the English Courts for final determination in accordance with clause 5.12 below.

5.10.7 Nothing in this clause shall prevent any party seeking injunctive or interim relief.

5.10.8 The commencement of a mediation shall not prevent either party from commencing or continuing court proceedings.

5.11 Insurance

5.11.1 No insurance will be effected by Amalga except upon express instructions given in writing by the Customer and accepted in writing by Amalga, and all insurances effected by Amalga are subject to the usual exceptions and conditions of the policies of the insurers or underwriters taking the risk. Unless otherwise agreed in writing, Amalga shall not be under any obligation to effect a separate insurance on the goods, but may declare it on any open or general policy held by Amalga.

5.11.2 Insofar as Amalga agrees to effect insurance, Amalga acts solely as agent for the Customer, and all limits of liability under these Terms shall not apply to Amalga's obligations under this clause 5.11.

5.12 Governing Law & Jurisdiction

5.12.1 These Terms shall be governed by and construed in accordance with the law of England and Wales.

5.12.2 Subject to clause 5.10, any dispute arising under or in connection with these Terms shall be subject to the exclusive jurisdiction of the courts of England and Wales, to which each of the parties irrevocably submit.