

Southampton Isle of Wight and South of England Royal Mail  
Steam Packet Company Limited T/A Red Funnel Ferries

Terms and conditions  
for the supply of goods and services

(Version 2.0)

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## 1 DEFINITIONS

- 1.1 "**Agreement**" means the contract between Red Funnel and the Supplier constituted by the issue of a quotation by the Supplier to Red Funnel for the sale and purchase of the Goods and/or the supply of Services and Red Funnel's acceptance of the said quotation by the issue of a Purchase Order, or otherwise by an exchange of communication in writing between the parties.
- 1.2 "**Conditions**" means these standard terms and conditions or any other agreement which may be signed between Red Funnel and the Supplier.
- 1.3 "**Confidential Information**" means any information received by either Party in connection with the performance of this Agreement relating to its business, prices, finances, affairs, customers, potential customers, the Goods and/or the Services and includes the commercial terms of this Agreement, any Specification or materials.
- 1.4 "**Delivery**" means the delivery of the Goods and/or Services to Red Funnel pursuant to the Agreement.
- 1.5 "**Force Majeure**" means an event or circumstance which is beyond the reasonable control of a Party which by its nature could not reasonably have been foreseen by that Party and which renders that Party unable to perform its obligations under this Agreement including without limitation acts of God, fire, unexpected flooding and other extreme weather conditions, explosion, power failure or severe reduction in power supplies, war or acts of terrorism, the act of any government or authority and strikes, lock-outs and labour disputes (in each case, of national and not merely local effect), save for any delays or default caused by or resulting directly from any actions of any subcontractor appointed by the Supplier.
- 1.6 "**Intellectual Property Rights**" means patents, rights to inventions, copyright and related rights, trademarks and service marks, trade names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, rights in computer software, database rights, rights to preserve the confidentiality of information (including know-how) and any other intellectual property rights, in each case whether registered or unregistered and including all applications (or rights to apply for and be granted), renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.
- 1.7 "**Goods**" means all materials, components, goods, equipment and other items (including any part or part supply of them) set out in the Purchase Order and/or which are supplied under this Agreement.
- 1.8 "**Party**" means Red Funnel or the Supplier, as the case may be, and "**Parties**" means both of them.
- 1.9 "**Price**" means the price for the Goods and/or the Services set out in the Purchase Order

- 1.10 **"Purchase Order"** means the written order for Goods and/or Services issued by Red Funnel to the Supplier in response to a quotation of the Supplier.
- 1.11 **"Services"** means all services to be performed by the Supplier which includes but is not limited to: engineering, construction/refurbishment, installation/commissioning and servicing, pursuant to the Purchase Order and this Agreement.
- 1.12 **"Specification"** means any plans, drawings, data, samples or other descriptions and including written instructions or information in each case supplied by one Party to the other Party relating to the Goods and/or Services.
- 1.13 **"Red Funnel"** means Southampton Isle of Wight and South of England Royal Mail Steam Packet Company Limited a company incorporated in England and Wales under company number 00002404, Trading as Red Funnel or, as the case may be, any of its associate or subsidiary companies.
- 1.14 **"Red Funnel Address"** means 12 Bugle Street, Southampton SO14 2SY, England.
- 1.15 **"Supplier"** means any person (whether an individual, a company or another legal entity) to whom Red Funnel issues a Purchase Order and such expression includes (where the context requires) all officers, employees, representatives, affiliates or agents employed or acting on behalf of the Supplier.
- 1.16 **"VAT"** means value added tax or other applicable indirect sales tax.

## **2 THE AGREEMENT**

- 2.1 These Conditions shall apply to all Purchase Orders and/or any purchases of Goods or Services to Red Funnel, to the exclusion of any and all terms and conditions issued or referred to by the Supplier on its quotation, invoice or otherwise, unless agreed in writing by an authorised representative of Red Funnel.
- 2.2 Irrespective of whether Red Funnel has supplied any Specification, the Supplier shall provide a description and Specification of Goods and/or Services to Red Funnel in relation to each Agreement promptly upon receipt of the relevant Purchase Order and in any event prior to the agreed time for Delivery, for approval by Red Funnel as a condition of the supply of those Goods and/or Services.
- 2.3 The Supplier warrants that at all times it (i) has and maintains all the necessary licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under each Agreement in respect of the supply of the Goods and/or Services and (ii) complies with all applicable laws, regulations and standards.

## **3 PRICE AND PAYMENT**

- 3.1 The Price shall be the full, fixed and exclusive remuneration of the Supplier.
- 3.2 The Price is exclusive of any VAT. Where any taxable supply for VAT purposes is made under this Agreement by the Supplier to Red Funnel, Red Funnel shall on receipt of a

valid VAT invoice from the Supplier pay to the Supplier (at the same time as payment of the Price is due) such additional amounts in respect of VAT as are chargeable on the supply of the Goods and/or Services.

- 3.3 With respect to Goods, the Price is inclusive of the costs of packaging, insurance, carriage and Delivery unless mutually agreed in writing otherwise.
- 3.4 The Price shall not be increased without the prior written consent of Red Funnel, whether on account of direct or indirect costs and expenses in connection with the performance of the Services, additional goods or services, increased material, labour or transport costs, fluctuation in rates of exchange or otherwise howsoever arising.

#### **4 SUPPLY OF GOODS**

- 4.1 It shall be a condition of this Agreement that all Goods shall:
  - 4.1.1 comply in all respects with their description and any applicable Specification;
  - 4.1.2 be of best quality;
  - 4.1.3 be fit for any purpose expressly or impliedly made known to the Supplier by Red Funnel;
  - 4.1.4 be free from defects in design, materials and workmanship; and
  - 4.1.5 comply with all applicable statutory and regulatory requirements together with applicable standards (including ISO) relating to the manufacture, labelling, packaging, storage, handling, operation and delivery of Goods.
- 4.2 Goods which require a CE mark shall be CE-compliant, have a CE mark and a Declaration of Conformity (in the English language) will be provided by the Supplier.
- 4.3 The provisions of Condition 4.1 shall be in addition to, and not in substitution for, any terms implied by statute as to the quality of the Goods.
- 4.4 The provisions of this Condition 4 shall survive any performance, acceptance or payment pursuant to this Agreement and shall extend to any substituted or remedial Goods provided by the Supplier.

#### **5 SUPPLY OF SERVICES**

- 5.1 In providing the Services, the Supplier shall:
  - 5.1.1 co-operate with Red Funnel in all matters relating to the Services, and comply with all of Red Funnel's reasonable instructions;
  - 5.1.2 perform the Services with the best care, skill and diligence in accordance with best practice prevailing at the time in the Supplier's industry, profession or trade;

- 5.1.3 use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with this Agreement and shall ensure that such personnel conform to all health and safety and security requirements (including use of personal protective equipment whether specifically notified to the Supplier or not) of Red Funnel when present at any of the Red Funnel terminals, buildings or vessels;
  - 5.1.4 ensure that the Services will conform with any description and Specification and shall be fit for any purpose expressly or impliedly made known to the Supplier by Red Funnel;
  - 5.1.5 provide all equipment, tools and vehicles and such other items as are required to provide the Services;
  - 5.1.6 use the best quality goods, materials, standards and techniques, and ensure that all goods and materials supplied and used in the Services or transferred to Red Funnel, will be free from defects in design, materials, workmanship and installation; and
  - 5.1.7 not do or omit to do anything which may cause Red Funnel to lose any licence, authority, consent or permission upon which it relies for the purposes of conducting its business, and the Supplier acknowledges that Red Funnel may rely or act on the Services.
- 5.2 The provisions of Condition 5.1 shall be in addition to, and not in substitution for, any terms implied by statute as to the title, quality and fitness for purpose of any goods used in the supply of the Services.
- 5.3 The provisions of this Condition 5 shall survive any performance, acceptance or payment pursuant to this Agreement and shall extend to any substituted or remedial Services provided by the Supplier.
- 5.4 The Supplier shall have an ongoing obligation to declare to Red Funnel if, to the best of their knowledge and belief, any of their employees who may be involved in delivering Goods or Services to Red Funnel, were previously employed by Red Funnel.

## **6 INSPECTION AND TESTING**

- 6.1 Red Funnel shall have the right to inspect and test the Goods at any facility of the Supplier at any time before Delivery upon reasonable notice being given to the Supplier.
- 6.2 If following inspection and/or testing Red Funnel reasonably consider that the Goods do not conform or are unlikely to comply with the Supplier's undertakings at Condition 4, Red Funnel shall give notice to the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance.
- 6.3 Notwithstanding any such inspection or testing, the Supplier shall remain fully responsible for the Goods and any such inspection or testing shall not reduce or otherwise affect the Supplier's obligations under this Agreement and Red Funnel shall

have the right to conduct further inspections and tests after the Supplier has carried out its remedial actions.

## **7 TESTING AND ACCEPTANCE**

- 7.1 Red Funnel shall have the right to inspect and test the Goods upon Delivery by the Supplier in order to ascertain whether the Goods comply with the Supplier's undertakings under Condition 4.
- 7.2 If following inspection and/or testing Red Funnel determine that the Goods do not comply with the Supplier's undertakings at Condition 4, Red Funnel will issue a notice to the Supplier, requesting collection of the Goods and the Supplier will collect them without delay, subject always to the provisions of Condition 9.

## **8 DELIVERY**

- 8.1 The Supplier shall ensure that:
  - 8.1.1 the Goods are properly packaged and secured in such manner so as to enable them to reach their destination in good condition.
- 8.2 The Supplier shall deliver the Goods and/or supply the Services:
  - 8.2.1 on the date(s) and if specified, at the time(s), set out in the Purchase Order or, if no date or time is specified in the Purchase Order, within a reasonable time of the communication of the order of Goods and/or Services by Red Funnel to the Supplier;
  - 8.2.2 to the address specified in the Purchase Order as set out in this Agreement or as instructed by Red Funnel before the time for delivery.
- 8.3 Risk in the Goods shall pass to Red Funnel upon delivery of the Goods and completion of unloading of the Goods at the delivery location.
- 8.4 Title to the Goods shall pass to Red Funnel upon the earlier of payment or delivery of the Goods.
- 8.5 Red Funnel shall not be liable to the Supplier for any reasonable delay caused to the Supplier in delivering Goods and/or supplying Services to any Red Funnel premises where such delay arises out of operational restrictions resulting from Red Funnel's operational processes (for example, vessel timetables).
- 8.6 Any container or packaging which is intended to be returned to the Supplier remains the property of the Supplier and at the Supplier's risk at all times.
- 8.7 At Red Funnel's request, the Supplier shall provide Red Funnel with all relevant inspection documentation, which shall include but not be limited to reports on quality control, test certificates, time schedules, progress reports and any danger/ risk analysis documentation in respect of CE marks.

## **9 REJECTION OF GOODS AND/OR SERVICES**

- 9.1 If the Supplier has delivered Goods that do not comply with the undertakings set out in Condition 4.1 then, without prejudice to its other rights or remedies, Red Funnel shall be entitled to:
- 9.1.1 reject the Goods (in whole or in part) whether or not title has passed and to return them to the Supplier at the Supplier's risk and expense;
  - 9.1.2 terminate the Purchase Order and/or this Agreement with immediate effect by giving notice to the Supplier;
  - 9.1.3 require the Supplier to repair or replace the rejected Goods, or to provide a full refund of the Price of the rejected Goods (to the extent paid);
  - 9.1.4 refuse to accept any subsequent delivery of the Goods which the Supplier attempts to make;
  - 9.1.5 recover from the Supplier any expenditure incurred by Red Funnel in obtaining substitute goods from a third party; and
  - 9.1.6 claim damages for any additional costs, loss or expenses incurred by Red Funnel arising from the Supplier's failure to deliver the Goods in accordance with Condition 4.1.

## **10 DELAY**

- 10.1 It is agreed that time is of the essence in respect of the time for delivery of Goods and/or Services under this Agreement. If the Supplier fails to supply the Goods and/or Services by the applicable date(s) and time(s), without prejudice to its other rights or remedies Red Funnel shall be entitled:
- 10.1.1 to terminate the Purchase Order and/or this Agreement with immediate effect by giving notice to the Supplier;
  - 10.1.2 to refuse to accept any subsequent supply of the Services and/or the Goods which the Supplier attempts to make;
  - 10.1.3 to recover from the Supplier any costs incurred by Red Funnel in obtaining substitute goods and/or services from a third party;
  - 10.1.4 where Red Funnel has paid in advance for Services and/or Goods which have not been supplied by the Supplier, to have such sums refunded by the Supplier; and
  - 10.1.5 to claim damages for any additional costs, loss or expenses incurred by Red Funnel which are in any way attributable to the Supplier's failure to meet such date(s) and time(s).



## **11 INVOICES, STATEMENTS AND PAYMENT**

- 11.1 Invoices shall be addressed and sent to Red Funnel's Accounts Department by first class post, in accordance with this Agreement and referring to the Purchase Order number.
- 11.2 Statements of ongoing accounts shall be addressed and sent to Red Funnel's Accounts Department at the Red Funnel Address on a monthly basis. The statements shall list all invoices issued to Red Funnel which are unpaid with cross references to the appropriate Purchase Order number.
- 11.3 In consideration of the supply of Goods and/or Services by the Supplier, Red Funnel shall pay the Price within 30 days from the end of the month in which a valid invoice was received by Red Funnel.
- 11.4 For the avoidance of doubt if a Supplier submits an invoice for which no valid Purchase Order has been issued, then Red Funnel may return the invoice to the Supplier unpaid.
- 11.5 If Red Funnel fails to pay any amount properly due and payable by it under this Agreement (and which amount is not disputed by Red Funnel in good faith), the Supplier shall have the right to charge interest on the overdue amount at its usual rate subject to a maximum rate of 4% per annum above the base rate for the time being of the Bank of England, accruing on a daily basis from the date of receipt by Red Funnel of notice that the amount is overdue and that accordingly interest at the stated rate will apply, up to the date of actual payment.
- 11.6 Red Funnel may, without limiting its other rights or remedies, set-off any amount owing to it by the Supplier (whether under this Agreement or otherwise) against any amount payable by Red Funnel to the Supplier under this Agreement.

## **12 TERMINATION**

- 12.1 In addition to such rights as it may have at general law or under other provisions of this Agreement, either Party may terminate this Agreement immediately if the other Party:
  - 12.1.1 commits a material or persistent breach of this Agreement and (if such a breach is remediable) fails to remedy that breach within 30 days of receipt of notice of the breach;
  - 12.1.2 is a party to dishonest or fraudulent conduct in relation to this Agreement;
  - 12.1.3 has a bona fide petition presented, order made or resolution passed in any part of the world for the winding up, liquidation or dissolution of it or if a receiver, receiver and manager, administrator or comparable official is appointed of the whole or a material part of the Party's undertaking, property or assets;
  - 12.1.4 suspends or threatens to suspend payment of its debts, is unable to pay its debts as they fall due or ceases to carry on its present business or states or intimates any intention of so doing;

- 12.1.5 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;
- 12.1.6 being an individual, is the subject of a bankruptcy petition order, or 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.
- 12.2 Without prejudice to its other rights or remedies, Red Funnel may terminate any Purchase Order and/or this Agreement by giving the Supplier 30 day's written notice.
- 12.3 Either Party's rights in respect of antecedent breach shall survive termination of this Agreement (howsoever caused).

### **13 WARRANTY OF FREEDOM FROM DEFECTS**

- 13.1 The Supplier guarantees all Goods against defects in design, materials and workmanship for a period not less than 12 months after delivery of the product.
  - 13.2 The Supplier guarantees all goods and materials supplied and/or used in the performance of the Services against defects in design, materials, workmanship and installation for a period not less than 12 months after delivery of the product to which the Services relate to Red Funnel.
  - 13.3 In the event of a defect occurring in the Goods or Services within the guarantee periods specified in Clauses 13.1 and 13.2 above, the Supplier will, without delay, either replace or repair the defect at Red Funnel's election. Unless otherwise agreed by Red Funnel the repair or replacement will take place at the Red Funnel Address. All costs arising from and out of the replacement or repair of the defect shall be for the Supplier's account.
  - 13.4 Condition 13.3 will apply to serial defects, including circumstances where the defects have not yet been found in all the supplies of the same kind.
  - 13.5 Notwithstanding Condition 13.3:
    - 13.5.1 if the defect's rectification or replacement is required for safety reasons; or
    - 13.5.2 the Supplier fails to repair or replace any defect within a reasonable time pursuant to Condition 13.3;
- Red Funnel will be entitled to proceed to remedy the defect immediately and without notification to the Supplier and will be entitled to recover the costs arising from such remedy from the Supplier without affecting Red Funnel's rights or the Supplier's obligations, including warranty obligations, under this Agreement.
- 13.6 If the parties are unable to agree on the existence of a defect, the Supplier will in any event be obliged to repair or replace the defect at its cost. If, after repair or rectification of the alleged defect, the Supplier is able to prove that the alleged defect was

incorrectly claimed as a defect, Red Funnel will refund the reasonable costs of the Supplier in remedying the defect.

#### **14 LIMITATION OF LIABILITY**

- 14.1 Neither party shall be liable to the other for indirect losses, consequential losses, loss of profits and/or loss of production arising under or in accordance with this Agreement.
- 14.2 Nothing in this Agreement will exclude, limit, or restrict either party's liability for fraud, death or personal injury resulting from their negligence or any other matter in respect of which liability cannot be limited by applicable law.
- 14.3 Subject to clauses 14.1 and 14.2, the aggregate liability of Red Funnel in respect of all claims arising out of or in connection with each Agreement (including without limitation as a result of breach of contract, negligence or any other tort, under statute or otherwise) shall not exceed the Price.

#### **15 INDEMNITY**

- 15.1 The Supplier shall indemnify Red Funnel in full against all costs, expenses, damages and losses (whether direct or indirect), including any interest, fines, legal and other professional fees and expenses awarded against or incurred or paid by Red Funnel as a result of or in connection with:
  - 15.1.1 any claim against Red Funnel by a third party arising out of, or in connection with, the supply of the Goods or Services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of this Agreement by the Supplier, its employees, agents or subcontractors ;
  - 15.1.2 any claim made against Red Funnel by a third party for death, personal injury or damage to property arising out of, or in connection with, defects in Goods, to the extent that the defect in the Goods is attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors;
  - 15.1.3 claims in respect of death, personal injury or damage to property (in each case howsoever caused and whether or not Red Funnel has been negligent or at fault) of any employee, agent or subcontractor of the Supplier whilst at Red Funnel's premises or other places of business;
  - 15.1.4 any claim made against Red Funnel for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the manufacture, supply or use of the Goods and/or receipt, use or supply of the Services.
- 15.2 The Supplier shall maintain in force at its cost professional indemnity insurance, product liability insurance and public liability insurance each for no less than GBP £10 million (or such other amount as may be agreed in writing between the Parties) with a reputable insurer to cover against the risks set out in this Condition 15 and this Agreement. The Supplier shall produce on demand documentary evidence satisfactory

to Red Funnel (acting reasonably) of details of cover and the payment for the current year's premium in respect of each insurance.

- 15.3 The provisions of this Condition 15 shall survive the expiry or termination of this Agreement howsoever arising.

## **16 INSPECTION OF RECORDS AND DOCUMENTATION**

16.1 The Supplier shall maintain complete and accurate records of the time spent and materials used in providing the Services and shall allow Red Funnel to inspect such records at all reasonable times on request.

16.2 The Supplier hereby declares that it is fully aware of the need for timely submission and correctness of documentation for Goods and Services and confirms that it will be liable to Red Funnel for any damages resulting from delays or errors.

## **17 HEALTH AND SAFETY**

17.1 If the Supplier works at or visits Red Funnel's premises, the Supplier will strictly observe and follow all Red Funnel's requirements for contractors and visitors to Red Funnel's premises and shall adhere to guidance contained in the Red Funnel's Health and Safety and security policies. The Supplier shall be responsible for supplying any required personal protective equipment required for its work or visit.

## **18 ANTI-BRIBERY**

18.1 The Supplier agrees that it will not, in connection with this Agreement, bribe, or attempt to bribe (which shall include without limitation, any offer of any form of payment, gift or other form of inducement, reward or advantage (whether of money or anything of value)) Red Funnel, or any of Red Funnel's employees, agents, representatives, affiliates or persons employed by or acting on behalf of Red Funnel, any customers, potential customers, any public or government officials or employees, public international organisations, political parties, or private individuals or other entities ("**Relevant Parties**").

18.2 The Supplier represents and warrants to Red Funnel that it has not, prior to the date of this Agreement, bribed or attempted to bribe any Relevant Parties in order to secure and/or retain any business for the Supplier or Red Funnel whether in connection with this Agreement or otherwise.

18.3 The Supplier acknowledges and agrees that it is familiar with and will abide by the anti-bribery and anti-money laundering laws in all the countries in which it is incorporated or established and in which it does business, including without limitation The Bribery Act 2010.

18.4 The Supplier agrees that it will not take or knowingly permit any action to be taken that would cause Red Funnel to be in violation of any applicable anti-bribery or anti-money laundering laws.

- 18.5 The Supplier agrees that its books, records and all accounts shall accurately reflect any and all payments in respect of transactions of the Supplier whether under this Agreement or otherwise, and Red Funnel (and Red Funnel's authorised representatives) shall have the right to inspect, audit and to take copies of the Supplier's books, records and accounts at any time on prior notice.
- 18.6 If the Supplier discovers that it has or may have violated any of the provisions in this Condition 18, the Supplier shall immediately notify Red Funnel and cooperate with any investigations by Red Funnel into such matters.
- 18.7 Without prejudice to the generality of Conditions 18.1 to 18.6 inclusive, the Supplier covenants with Red Funnel to establish and at all times maintain and implement such anti-bribery policies and procedures as may be reasonably required to ensure that it prevents bribery or attempted bribery taking place on the Supplier's behalf.
- 18.8 Red Funnel may terminate this Agreement immediately upon notice in the event of a breach of this Condition 18 by the Supplier.
- 18.9 Red Funnel shall not be required to make any payments to the Supplier that might otherwise be due from Red Funnel if such payments are related to a transaction in connection with which the Supplier has breached this Condition 18.

## **19 INTELLECTUAL PROPERTY RIGHTS**

- 19.1 All Intellectual Property Rights in any Specification or other information or documentation that either Party develops under or in connection with this Agreement will vest absolutely in the developing Party or such other person(s) as it may direct provided that the Supplier grants an irrevocable perpetual worldwide sub-licensable licence to Red Funnel to use the Supplier's Intellectual Property Rights in the Goods and Services.
- 19.2 Notwithstanding Clause 19.1, all Intellectual Property Rights and title in any drawings, plans or designs for a bespoke design ordered for Red Funnel, shall vest absolutely in Red Funnel on Delivery.
- 19.3 The Supplier shall not use Red Funnel's name or trademarks in any marketing or promotional material, stationery, vehicles or on its website without the express prior written consent of Red Funnel.

## **20 CONFIDENTIALITY**

- 20.1 Both parties acknowledge that during the term of this Agreement they may have access to Confidential Information in respect of the other party. Each party undertakes to:
- 20.1.1 use any Confidential Information belonging to the other party solely for the purposes of performing its obligations under this Agreement; and
- 20.1.2 keep the Confidential Information belonging to the other party secret and confidential and in particular not to divulge, publish or disclose the same whether in

whole or in part however directly or indirectly to any person other than the other party, or in confidence on a need to know basis to employees, agents and/or subcontractors who are subject to confidentiality obligations in respect thereof.

20.2 The above undertakings as to confidentiality shall not apply to any information which the Supplier can establish to Red Funnel's reasonable satisfaction:

20.2.1 is at the date of disclosure in or subsequently enters the public domain otherwise than as a consequence of any unauthorised disclosure, act or omission by the Supplier; or

20.2.2 is required to be disclosed by a government authority or by law.

20.3 The provisions of this Condition 20 shall survive the expiry or termination of this Agreement howsoever arising.

20.4 The Supplier may be required to enter a separate Confidentiality Agreement, in which case, that Confidentiality Agreement shall take precedence over the above provisions of this Condition 20 and shall form an integral part of this Agreement.

20.5 The Supplier acknowledges and agrees that damages would not be an adequate remedy for any breach of this clause 20 and Red Funnel shall be entitled to the remedies of injunction, specific performance and other equitable relief for any threatened or actual breach of this agreement.

## **21 FORCE MAJEURE**

21.1 If either Party is affected by Force Majeure the non-performing Party shall promptly notify the other Party of the nature of the Force Majeure and an estimate of the effects and likely duration thereof.

21.2 Neither Party shall be deemed to be in breach of this Agreement, or otherwise be liable to the other, for any delay in its obligations to the extent that the delay or non-performance is due to any Force Majeure of which it has notified the other Party provided that the non-performing Party has not defaulted in performing the obligation before the Force Majeure event occurs.

21.3 The non-performing Party shall use reasonable endeavours to continue to perform the obligation and shall promptly take steps reasonably required by the other Party to avoid or mitigate losses to that other Party arising from the delayed performance.

21.4 If the Force Majeure delay claimed by the non-performing Party continues for a period in excess of 30 days, notwithstanding any other provision of this Agreement the other Party shall be entitled to terminate this Agreement upon not less than fourteen days notice to the non-performing Party, after which neither Party shall be under any liability to the other Party under this Agreement, save in respect of accrued rights.

## **22 ENVIRONMENTAL AND CORPORATE SOCIAL RESPONSIBILITY**

- 22.1 Red Funnel is ISO14001 and ISO9001 accredited details of which can be found at <http://www.redfunnel.co.uk/corporate-information/>. It is expected that all Suppliers will comply with the requirements Red Funnel request in adhering to these standards.

## **23 LAW AND JURISDICTION**

- 23.1 This Agreement and any non-contractual obligations arising from or out of it shall be governed by and construed in accordance with English law.
- 23.2 The Parties shall use reasonable endeavours to settle any disputes arising under this agreement by negotiation, agreement and/or mediation; however, if this is not possible the dispute will be submitted to and settled exclusively by the Courts of England and Wales.

## **24 GENERAL**

- 24.1 The Agreement contains the entire agreement between the Parties and supersedes all previous agreements and understandings between the Parties with respect to this Agreement.
- 24.2 No employee or agent of Red Funnel has the authority to vary these Conditions, which may only be varied in writing signed by a director of Red Funnel. Red Funnel shall be entitled to rely on the execution by any individual purporting to bind the Supplier of a Purchase Order or any variation of these Conditions, unless otherwise notified in advance signed by a director of the Supplier.
- 24.3 Save as set out elsewhere in this agreement, a person who is not a party to this agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.
- 24.4 The Supplier shall not transfer, assign, sub-contract or sublet any part of this Agreement or any rights or obligations thereunder without the prior written consent of Red Funnel, which shall not be unreasonably withheld
- 24.5 The Supplier shall not be entitled to create or do anything which will result in the creation of any lien, encumbrance, right of retention or any other kind of security over the Goods or in respect of the Services and will ensure that a similar condition is included in all contracts with its sub-contractors.
- 24.6 All notices under this Agreement shall be given in writing in the English language and sent by post or fax addressed to the Parties in the case of Red Funnel, at the Red Funnel Address and, in the case of the Supplier, at its address set out in the Purchase Order, or to such other address notified to the other Party. Day to day communications which do not constitute formal notice under this Agreement may also be given by email.
- 24.7 A waiver of any right under this Agreement is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. Failure by Red

Funnel to exercise any of its rights under this Agreement or by law shall in no way constitute a waiver of these rights, nor shall such failure excuse the Supplier from any of its obligations under this Agreement.

24.8 Unless otherwise specified any rights arising under this Agreement are cumulative and do not exclude rights provided by law.

24.9 If any provision (or part of a provision) of this Agreement is held by any court or other competent authority to be void or unenforceable in whole or in part, this Agreement shall be varied so as to delete such provision (or part) and the remaining provisions of this Agreement shall continue to be valid and enforceable.