



BBA Shipping & Transport Ltd Standard Terms of Business

GENERAL

The Client's attention is particularly drawn to:

- clauses 25 to 36 which limit or exclude the Company's liability. These conditions have been drafted to take into account your primary obligation as customer to take out the appropriate risk insurance in accordance with clause 3.6;
- the agent's guarantee at clause 38; and
- the fact that the Client hereby acknowledges that this agreement provides for the Bloodstock to be transported at the Client's risk and subject to the limitations on the Company's liability at clause clauses 25 to 36. The Client further acknowledges that he has been offered the opportunity to enter into a contract for the Bloodstock to be transported at the Company's risk and/or subject to less limitations on the Company's liability at additional cost.

Interpretation

1.1 Definitions

In these terms:

- (i) "Animal Legislation" means any and all legislation, rules and regulations relating to the welfare, health, transportation, importation and exportation of horses in England and the countries of import and export of the Bloodstock, including, but not limited to, The Animal Welfare Act 2006
- (ii) "Bloodstock" means any horse, or other animal or livestock or goods, package equipment or consignment whatsoever to which any business concluded between the Client and the Company relates
- (iii) "Business" means the Contracts undertaken by the Company and services ancillary thereto including those undertaken gratuitously
- (iv) "Business Days": a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business
- (v) "Carriage" means the transport by whatever means of the Bloodstock by the Company on behalf of or at the request of the Client
- (vi) "Client" means any person at whose request or on whose behalf the Company agrees to act, undertake any service or carry Bloodstock including (but without prejudice to the generality of the foregoing) any other carrier for whom the Company acts as agent or any agent or representative of the Owner of the Bloodstock
- (vii) "Company" means BBA Shipping & Transport Limited (Company No: 04276708)
- (viii) "Consignment" means the Bloodstock to be carried by the Company whether comprising individual animals or a group of animals and whether the carriage shall be completed in one journey or by one vehicle or by several provided that the subject matter of the carriage are all identifiable by reference to one Contract
- (ix) "Contract" means the agreement between the Client and the Company for any work to be undertaken by the Company on behalf of or at the request of the Client including work or services undertaken gratuitously
- (x) "Guaranteed Obligations" shall have the meaning given at clause 38.1
- (xi) "Guarantor" shall have the meaning given at clause 38.1
- (xii) "Equine Passport Laws" means any and all laws and regulations relating to equine passports, including without limitation, Commission Regulation (EC) No 504/2008 and the Horse Passports Regulations 2009.
- (xiii) "Owner" means the owner(s) of the Bloodstock (or any part thereof), and any other person who is or may become interested in them
- (xiv) "Premises" shall have the meaning given at clause 11.3(a)

(xv) "Principal" shall have the meaning given at clause 38.1

1.2 Clause headings shall not affect the interpretation of this agreement.

1.3 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's personal representatives, successors and permitted assigns.

1.4 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.

1.5 Unless the context otherwise requires, a reference to one gender shall include a reference to other genders.

1.6 A reference to a party shall include that party's personal representatives, successors and permitted assigns.

1.7 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.

1.8 Any words following the terms **including, include, in particular, for example** or similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

Scope of These Terms

2. These terms shall apply to all Business undertaken by the Company (whether gratuitously or not) except for those activities for which the Company operates separate terms and conditions such as bloodstock agency work when these terms and conditions shall apply only insofar as they are not in conflict. They may only be varied by a director of the Company in writing.

The Client's Obligations, Representations & Warranties

3.1 Save where the Client conducts Business with the Company as purchaser (only to the extent title is yet to have passed to the purchaser) or prospective purchaser of the Bloodstock from or through the Company, the Client represents and warrants that he has all requisite power and authority to enter into and perform this agreement and all agreements and documents entered into, or to be entered into, pursuant to the terms of this agreement, either as the owner of the Bloodstock or the authorised agent for the owner. Where the Client conducts Business with the Company as purchaser (only to the extent title is yet to have passed to the purchaser) or prospective purchaser of the Bloodstock from or through the Company the Client warrants and represents that he contracts on his own behalf or with the full authority of any other principal upon whose behalf he may disclose himself to be acting.

3.2 Save to the extent that the Client reasonably relies upon advice given to him by the Company as part of the services to be performed by the Company under the Contract, the Client warrants and represents that the Bloodstock which the Client instructs the Company to move comply with all Animal Legislation and are in all respects in a fit condition to be so dealt with and to survive or endure transit without damage or injury and in particular are free of disease or infestation of any description and have not to the knowledge of the Client been in contact with any diseased or infected animal.

3.3 The Client undertakes to give the Company all necessary instructions in good time and warrants and represents the accuracy of any information given by him.

3.4 Except insofar as the same is caused solely by the negligence or breach of contract of the Company the Client shall be liable for all duties, taxes and levies of any kind payable to any authority arising out of the provision of services by the Company to or on behalf of the Client and shall indemnify the Company against any such outlay that the Company may be required to make on the Client's behalf.

3.5 The Client undertakes to ensure that the delivery address and recipient of the consignment are clearly made known to the Company in advance.

3.6 The Bloodstock shall be transported at the Client's risk and the Client shall:

- (a) have the Bloodstock ready for loading at the collection address at the date and time agreed with the Company;
- (b) make available sufficient personnel and equipment to enable the Bloodstock to be conveniently and safely loaded. Such personnel shall act in accordance with the instructions of the Company;
- (c) bring to the attention of the Company before the time of loading any characteristics of the Bloodstock or other matters of which the Company needs to be aware when planning and effecting the safe loading and transport of the Bloodstock;

- (d) insure the Bloodstock to their full commercial or market value with a reputable insurance company or underwriter against all customary perils including loss by theft or otherwise destruction damage injury and deterioration and shall maintain such insurance in full force and effect throughout the period when the Bloodstock are (or would but for the occurrence of one or more of the insured risks be) in the care custody or control of the Company. Should the Client wish, the Company can normally arrange insurance on the Client's behalf and to the Client's account but it is under no obligation to do so unless the Company has formally notified the Client in advance in writing that it will undertake responsibility for the same. Cover may be subject to payment being made in advance;
 - (e) take delivery (or procure that someone takes delivery) of the Bloodstock at the delivery address and shall be ready (or procure that someone is ready) to do so at any reasonable time; and
 - (f) make available sufficient personnel and equipment to enable the Bloodstock to be conveniently and safely unloaded at the delivery address, or procure that such personnel and equipment are made available. Such personnel shall act in accordance with the instructions of the Company.
- 3.7 The Client shall indemnify the Company against any claims, liabilities, costs, expenses or other losses of any nature whatsoever incurred:
- (a) by reason of the Company following any instruction given by the Client; or
 - (b) arising from the breach by the Client of any warranties, representations, undertakings or other obligations or terms contained herein.

The Company's Charges and Lien

4. A quotation for the services given by the Company shall not constitute an offer. A quotation shall only be valid for a period of 15 Business Days from its date of issue, unless revoked earlier or extended by the Company at its absolute discretion. The price for the services shall be the price set out in the quotation, or, if the Company has provided a list of prices applicable to the provision of those particular services to the Client, the price stated therein. The Company may (at its absolute discretion) by notice to the Client increase the price for the services to reflect any increase in the cost to the Company of supplying the services that is due to:
- (a) any factor beyond the Company's control (including foreign exchange fluctuations, increases in taxes and duties, increases in labour or costs of transportation);
 - (b) any request by the Client to change the delivery date(s) or quantities or type of Bloodstock to be transported; and
 - (c) any delay caused by any instructions of the Client or failure of the Client to give the Company adequate or accurate information or instructions.
5. Subject to clause 6, the Client shall pay for the services rendered immediately upon invoice. Such invoice may (at the Company's absolute discretion) be raised and be payable in advance of any services being rendered or at any time thereafter.
6. The Company may (at its absolute discretion) extend credit to a Client. Unless agreed otherwise in writing between the parties, where credit is extended payment shall be due within 30 days of the invoice date. Such invoice may (at the Company's absolute discretion) be raised in advance of any services being rendered or at any time thereafter.
7. Interest shall be payable on all overdue accounts at a rate of 8% per annum above the base rate of the Barclays Bank plc from time to time applicable on all balances outstanding until payment.
8. All amounts due for payment by the Client under this agreement shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law). Costs incurred by the Company in recovery of any debt shall be payable by the Client.
9. Without prejudice to any other right or remedy available, the Company shall have a general lien on all property within its control, custody or possession and belonging to the Client or Owner (including any Bloodstock and documentation relating to the same) in respect of all sums due at any time from the Client or Owner whether or not relating to that particular Consignment. If such lien is not satisfied the Company shall be entitled, on the expiry of 14 days' notice in writing to the Client, to dispose of such property as agent for the Client and/or Owner (as applicable) in such manner and at such price as it (in its absolute discretion) thinks fit and to apply the proceeds towards the money due and the expenses of retention, insurance and sale of the goods (including interest where applicable). Only after the sale proceeds have been applied for such purpose shall the Supplier be under any obligation to account to the Owner and/or Client (as applicable) for any surplus. In the event that the proceeds of the sale do not satisfy all the monies owed to the Company in full, the balance outstanding shall remain recoverable as a debt owed to

the Company. The Company shall not be obliged in exercising such lien and right of disposal to achieve any particular price or value for the Bloodstock.

10. Notice of the exercise of the lien and right of disposal pursuant to clause 9 shall be given by first class post to the last known address of the Client but the Company shall be under no obligation to prove receipt of the same. In the event that no such address is known notification shall be given by means of a notice to that effect placed in any daily or weekly racing publication.

BOARDING TERMS

- 11.1 When in the Company's opinion it is reasonably necessary to do so the Company may board Bloodstock which are in transit or awaiting transportation following purchase by a Client or following instructions to the Company in respect of its forwarding activities.
- 11.2 The Company will also board Bloodstock when it has been specifically instructed in writing to do so by a Client and has accepted those instructions.
- 11.3 When boarding Bloodstock:
 - (a) the Company may do so at any stud farm, livery yard or other place it deems suitable, whether owned by the Company or a third party (**Premises**);
 - (b) the standard terms and conditions in operation at the Premises shall be applicable to the boarding, which shall include an additional charge not included in the Company's quotation or published list of prices;
 - (c) unless the Company elects (at its absolute discretion) to act as principal and re-charge the Client for the costs of the same, the Company shall act as the Client's and/or Owner's (as applicable) agent in regards to Premises owned or operated by a third party and the Client and/or Owner (as applicable) hereby fully authorises the Company to contract with the owner or operator of such Premises for and on the Client's and/or Owner's behalf on their standard terms of business. When acting as agent the Company has discretion, but is not obliged to make direct payment to the owner or operator of the Premises and seek reimbursement from the Client; and
 - (d) except where the same is caused as a direct result of its own negligence or that of its employees, the Company shall not be liable for death, loss or theft of or damage or injury to Bloodstock whilst boarding.

PROVISION OF ADVICE, INFORMATION, VALUATION AND OTHER SERVICES

12. Subject to the other terms and provisions of these Terms of Business, upon specific written agreement with the Client the Company will provide additional services ancillary to and complementary to the forwarding of Bloodstock;
13. The Company shall be entitled to charge fees for these services at the scale fees prevailing at the date of the Company's invoice or as otherwise specifically agreed with the Client.
14. Advice and information which is not related to specific instructions accepted by the Company is provided gratuitously and without any liability whatsoever being incurred by the Company.

TERMS OF CARRIAGE

15. Unless otherwise specifically agreed to the contrary with the Client, the Company shall be entitled to elect (at its absolute discretion) to procure any carriage, safekeeping, packing, forwarding, delivery or handling of Bloodstock or any other service (or part thereof) as the Client's and/or Owner's (as applicable) agent or to provide those services (or part thereof) itself as principal. The Client and/or Owner (as applicable) hereby fully authorises the Company to form contracts for and on his behalf for this purpose.
16. When acting as an agent the Company will act solely on behalf of the Client in establishing contracts with third parties. At the Client's request the Company will provide evidence of any contract negotiated with such third party on the Client's behalf and in the event that the Company is unable to do so it shall be deemed to have acted as a principal.
17. When acting as an agent the Company shall, unless it is specifically agreed otherwise with the Client in writing:
 - (a) arrange for carriage, handling, forwarding, delivery or safekeeping of Bloodstock by any route, means or person at the absolute discretion of the Company;
 - (b) make no declaration of value or of special interest in delivery in respect of the Bloodstock; and
 - (c) have discretion, but not be obliged to make direct payment to the third party contracted with and seek reimbursement from the Client.

18. When acting as Principal the Company:
 - (a) deals on the basis of these terms alone;
 - (b) is not a common carrier; and
 - (c) shall have absolute discretion as to the means, routes and procedures to be followed in the carriage, handling and safekeeping of the Bloodstock.
19. Save where the Company has been given and has accepted in writing instructions as carrier to arrange delivery of Bloodstock to a specified destination by a specified date, the Company accepts no responsibility for departure or arrival dates of Bloodstock. In any event the Company's responsibility shall only be to use its reasonable endeavours as carrier to deliver the Bloodstock to the specified destination by the specified date given and accepted as aforesaid and time for performance and delivery by the Company shall not be of the essence of this agreement.
20. The Company will not accept or deal with Bloodstock of a dangerous or damaging nature nor with horses suffering from any infectious or contagious disease or which may have been in contact with other infected animals. Should the Client deliver to the Company or cause the Company to deal with such Bloodstock or Bloodstock that is otherwise in anyway not in full compliance with all Animal Legislation without such written instructions and consent he shall be liable for all loss or damage arising to or from such Bloodstock or out of or in connection with their transportation and shall indemnify the Company against all liability, claims, costs, expenses and other losses whatsoever arising out of or in connection therewith and the Bloodstock may be dealt with in such manner (including destruction) as the Company or other person having custody of the Bloodstock shall think fit.
21. The Client shall indemnify the Company against any general average claims which may be made against the Company and if required by the Company shall provide adequate security therefor.
22. If the Client or Owner or their nominee does not take prompt delivery of any Consignment the Company shall be entitled to board or store the Consignment at the Client's or Owner's risk and expense. Should the Consignment not be collected within a reasonable time and, in any event, within 14 days after notice to the Client or Owner the Company may sell or otherwise dispose of such Consignment at the expense of such party without any obligation as to any particular price and after deducting any monies owing to the Company (including sale or disposal costs and interest) account to the Client for any balance provided that if any sum shall remain owing to the Company after such sale or disposal such sum shall be a debt due and payable to the Company in the usual manner.
23. Unless special arrangements to the contrary have been made the Company shall be under no obligation to forward or to deliver the Bloodstock until all freight and other charges have been paid by the Client.
24. The carriage of any Consignment other than by road namely by rail sea air or inland waterway is undertaken by the Company as agent for the Client and the contract in such cases shall be between the Client and the other carrier. Carriage by rail sea air or inland waterway shall be subject to the terms and conditions from time applied by such other carrier.

The Company's Liabilities

25. Nothing in this agreement limits or excludes the Company's liability for:
 - (a) death or personal injury caused by its negligence (within the meaning of section 2(1) of the Unfair Contract Terms Act 1977);
 - (b) fraud or fraudulent misrepresentation; or
 - (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession) or any other liability which cannot be limited or excluded by applicable law.
26. Subject to clause 25, the Company shall not be liable to the Client or Owner, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with this agreement for:
 - (a) any accident, injury, disease or damage to the Bloodstock or loss, theft or death thereof;
 - (b) loss of profits;
 - (c) loss of sales or business;
 - (d) loss of agreements or contracts;
 - (e) loss of anticipated savings;
 - (f) loss of or damage to goodwill;
 - (g) loss of use or corruption of software, data or information; nor
 - (h) any indirect or consequential loss.

27. The terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from this agreement.
28. The Company's liability howsoever arising shall not exceed:
- (i) in the case of claims involving any of the matters referred to at clause 26(a) above in relation to the Bloodstock the lesser of:
 - (a) the value or diminution in value of any Bloodstock which have suffered an event listed at clause 26(a) above;
 - (b) the cost of any veterinary treatment of such Bloodstock (if applicable and only to the extent any injury or damage can reasonably be treated to return the Bloodstock to roughly a similar value as before the event in question occurred); or
 - (c) £5,000 in aggregate for all of the Bloodstockbut limited in any event to the loss actually proved to have been sustained; and
 - (ii) in the case of all other claims a maximum of £10,000 per claim but limited in any event to the loss actually proved to have been sustained.
29. Without prejudice to clause 27, the Company's total liability to the Client and Owner whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with this agreement shall be limited in respect of all claims (connected or unconnected) in any consecutive 12 (twelve) month period, to £10,000.
30. The Company will if asked by the Client in writing provide a written quotation for acceptance of a greater liability on the part of the Company than that set out above. If such quotation is accepted in writing by the Client in advance of the Company commencing performance of the Contract then these conditions should be varied to the extent set out in the written quotation but no further.
31. If the Company's performance of its obligations under this agreement is prevented or delayed by any act or omission of the Client, its agents, subcontractors, consultants or employees, the Company shall not be liable for any costs, charges or losses sustained or incurred by the Client that arise directly or indirectly from such prevention or delay.
32. The Client shall be liable to pay to the Company, on demand, all reasonable costs, charges or losses sustained or incurred by the Company (including any direct, indirect or consequential losses, loss of profit and loss of reputation, loss or damage to property and those arising from injury to or death of any person and loss of opportunity to deploy resources elsewhere) that arise directly or indirectly from the Client's fraud, negligence, failure to perform or delay in the performance of any of its obligations under this agreement, subject to the Company confirming such costs, charges and losses to the Client in writing.
33. Neither party shall be in breach of this agreement nor liable for delay in performing, or failure to perform, any of its obligations under this agreement if such delay or failure result from events, circumstances or causes beyond its reasonable control including, without limitation:
- (a) acts of God, flood, drought, earthquake or other natural disaster;
 - (b) epidemic or pandemic;
 - (c) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;
 - (d) nuclear, chemical or biological contamination or sonic boom;
 - (e) any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent;
 - (f) legal or illegal restriction on movement or delivery;
 - (g) collapse of buildings, fire, explosion or accident;
 - (h) any labour or trade dispute, strikes, industrial action or lockouts;
 - (i) non-performance by suppliers or subcontractors; and
 - (j) interruption or failure of utility service.

Claims

34. The Client agrees to make any claim against the Company in writing immediately and without delay by notice in writing sent by first class recorded delivery post or facsimile. Should the Company suffer prejudice through the late presentation of a claim it shall be relieved of liability in respect of such claim.
35. In any event there shall be an absolute time bar of nine months within which the Client must bring suit against the Company, time running from the date of the event or occurrence alleged to give rise to the cause of action.

36. When the Company has carried out services as an agent it shall be the Client's responsibility to claim against the third party carrier or contractor and Clients are advised that carrier's time limits for claim are frequently strictly enforced.

Export and Import Licences and Veterinary Certificates

37. Unless otherwise agreed it shall be the Client's responsibility to obtain any import or export licence or veterinary certificate required and to comply in all respects with the Animal Legislation and Horse Passport Laws in respect of the Bloodstock. The Client shall in advance of transit supply the Company with all necessary identification papers, certificates or other documents required by the Horse Passport Laws, Animal Legislation, Statutory or other Order Rule or Regulation of either the United Kingdom or any country through which the Bloodstock is being transported. The Company shall not be responsible for any delay or loss arising from the Client's failure to comply with such obligation.

Agent's Guarantee

- 38.1 In consideration of the Company entering into the Contract and to the extent the Client acts or purports to act as agent (**Guarantor**) for a third party (**Principal**), he accepts these terms both for himself and on behalf of any such Principal and hereby guarantees to the Company and its successors, transferees and assigns the due and punctual performance of all present and future obligations of the Principal under or in connection with these terms and the Contract if and when they become performable (**Guaranteed Obligations**).
- 38.2 The Guarantor as principal obligor and as a separate and independent obligation and liability from its obligations and liabilities under clause 38.1 agrees to indemnify and keep indemnified the Company in full and on demand from and against all and any losses, costs and expenses suffered or incurred by the Company arising out of, or in connection with:
- (a) any failure of the Principal to perform or discharge the Guaranteed Obligations; or
- (b) any of the Guaranteed Obligations being or becoming totally or partially unenforceable by reason of illegality, incapacity, lack or exceeding of powers, ineffectiveness of execution or any other matter,
- but the Guarantor's liability under this indemnity shall be no greater than the Principal's liability in respect of the Guaranteed Obligations was (or would have been, had the relevant obligation been fully enforceable).
- 38.3 This guarantee is a continuing guarantee which shall remain in full force and effect until all the Guaranteed Obligations have been satisfied or performed in full, notwithstanding any intermediate satisfaction or performance of the Guaranteed Obligations by the Principal, the Guarantor or any other person.
- 38.4 The liability of the Guarantor under this guarantee shall not be reduced, discharged or otherwise adversely affected by any act, omission, matter or thing which would have discharged or affected the liability of the Guarantor had it been a principal obligor instead of a guarantor, or indemnifier, or by anything done or omitted by any person which, but for this provision, might operate or exonerate or discharge the Guarantor or otherwise reduce or extinguish its liability under this guarantee.
- 38.5 The Guarantor waives any right it may have to require the Company (or any trustee or agent on its behalf) to proceed against or enforce any other right or claim for payment against any person before claiming from the Guarantor under this guarantee.
- 38.6 Until all amounts which may be or become payable by the Principal under or in connection with this guarantee have been irrevocably paid in full, and unless the Company otherwise directs in writing, the Guarantor shall not exercise any security or other rights which it may have by reason of performance by it of its obligations under this guarantee, whether such rights arise by way of set-off, counterclaim, subrogation, indemnity or otherwise.
- 38.7 This guarantee is in addition to and shall not affect nor be affected by or merge with any other judgment, security, right or remedy obtained or held by the Company from time to time in respect of the discharge and performance of the Guaranteed Obligations by the Principal.
- 38.8 Any release, discharge or settlement between the Guarantor and the Company in relation to this guarantee shall be conditional on no right, security, disposition or payment to the Company by the Guarantor, the Principal or any other person being avoided, set aside or ordered to be refunded pursuant to any enactment or law relating to breach of duty by any person, bankruptcy, liquidation, administration, protection from creditors generally or insolvency or for any other reason. If any such right, security, disposition or payment is avoided, set aside or ordered to be refunded, the Company shall be entitled

subsequently to enforce this guarantee against the Guarantor as if such release, discharge or settlement had not occurred and any such security, disposition or payment had not been made.

- 38.9 All sums payable by the Guarantor under this guarantee shall be paid in full to the Company in the currency in which the Guaranteed Obligations are payable, free and clear of any deductions or withholdings of any kind, except for those required by any law or regulation binding on the Guarantor.
- 38.10 If any deduction or withholding is required to be made by law or regulation binding on the Guarantor, the Guarantor shall pay that additional amount which is necessary to ensure that the Company receives a net amount equal to the full amount which it would have received if the payment had been made without the deduction or withholding.
- 38.11 If the Guarantor fails to make any payment due to Company under this agreement by the due date for payment, then the Guarantor shall pay interest on the overdue amount at the rate of 8% above the base rate of the Barclays Bank plc from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. Guarantor shall pay the interest together with the overdue amount.
- 38.12 The Guarantor shall on a full indemnity basis pay to the Company on demand the amount of all costs and expenses (including legal and out-of-pocket expenses and any valued added tax on those costs and expenses) which the Company incurs in connection with:
- (a) the preservation, or exercise and enforcement, of any rights under or in connection with this guarantee or any attempt so to do; and
- (b) any discharge or release of this guarantee.

Waiver

39. No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

Severance

- 40.1 If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this agreement.
- 40.2 If any provision or part-provision of this agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

Entire Agreement

- 41.1 This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 41.2 Each party agrees it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

Assignment and Other Dealings

- 42.1 This agreement is personal to the Client and the Client shall not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights under this agreement.
- 42.2 The Company may at any time assign, transfer, mortgage, charge or deal in any other manner with any or all of its rights and obligations under this agreement.

Third Party Rights

- 43.1 Except as expressly provided in clause 43.2, 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.
- 43.2 It is hereby declared that any sub-contractor of the Company and the servants and agents of the Company are further parties to this contract within the meaning of the Contracts (Rights of Third Parties) Act 1999 and shall be entitled to enforce the same accordingly.

Arbitration

44. In the event of any dispute arising in relation to this agreement or its terms the dispute shall be referred to the decision of a single arbitrator appointed by the Institute of Arbitrators pursuant to the provisions of the Arbitration Acts or any statutory modification or re-enactment thereof for the time being in force.

Governing Law

45. This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

Jurisdiction

46. Subject to clause 44, each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).