

GENERAL CONDITIONS OF PURCHASE

1. DEFINITIONS AND INTERPRETATION

1.1. In these Conditions (unless the context otherwise requires), the following words and phrases shall have the following meanings.

"**Conditions**" means these terms and conditions of purchase as amended by Heavy Haul Rail from time to time;

"**Confidential Information**" means any of the following: (i) any and all information, however conveyed or presented, relating to the business, affairs, operations, processes, Intellectual Property Rights, customers, clients, personnel, suppliers, budgets, requirements, plans, intentions, designs, specifications, developments, prices and pricing policies, products, investments, strategies, trade secrets, know-how and/or market opportunities of any member of either party; (ii) any other information clearly designated by any member of either party as being confidential or which ought reasonably be considered to be confidential; and (iii) the terms of any Contract. Such information shall be deemed 'Confidential Information' except where it becomes publicly known without a breach of confidentiality;

"**Contract**" means the contract for the sale and purchase of Goods and Services between the Supplier and Heavy Haul Rail, incorporating these Conditions and formed in accordance with Condition 2.1;

"**Control**" means in respect of the Supplier, the acquisition of either:
(a) the voting rights attaching to 25% or more of the voting shares in the Supplier; or
(b) the power to direct or cause the direction and management of the policies of the Supplier in accordance with the acquirer's wishes, whether as a result of the ownership of shares, control of the board of directors, contract or any powers conferred by the articles of association or other constitutional documents of the Supplier;

"**Data Protection Legislation**" means Directive 95/46/EC as transposed into domestic legislation of each Member State of the European Economic Area and in each case as amended, replaced or superseded from time to time, including without limitation by the GDPR and the Data Protection Act 2018 or other applicable data protection or national/federal or state/provincial/emirate privacy legislation in force including without limitation any data protection laws in the UK post any exit by the UK from the European Union;

"**Delivery**" shall mean delivery of the Goods and/or Services to the point specified by Heavy Haul Rail (whether in the Order or otherwise) and in accordance with the Contract;

"**General Data Protection Regulation**" or "**GDPR**" means the Regulation of the European Parliament and of the Council on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (repealing the Data Protection Directive), together with the codes of practice, codes of conduct, regulatory guidance and standard clauses and other related legislation resulting from the GDPR, as updated from time to time;

"**Goods**" shall mean goods of any description, such as, but not limited to plant, machinery, equipment, vehicles and materials (whether raw or partly or wholly manufactured);

"**Intellectual Property Rights**" means all intellectual and industrial property rights including patents, rights in Confidential Information, know-how, registered trademarks, registered designs, utility models, unregistered design rights, unregistered trade marks, rights to prevent passing off for unfair competition, copyright, database rights, topography rights, rights in inventions, discoveries or processes, throughout the world and including all registrations and pending registrations and applications and pending applications of the aforementioned;

"**Heavy Haul Rail**" shall mean Heavy Haul Rail Group Limited, a company registered in England and Wales under number 05313119, whose registered office is at 6th Floor The Lewis Building, 35 Bull Street, Birmingham, United Kingdom, B4 6EQ and all of its subsidiaries;

"**Order**" shall mean a purchase order placed by Heavy Haul Rail with the Supplier for the supply of Goods and/or Services specified therein on the basis only of the Contract;

"**Payment Date**" means the date in each month or week (as the case may be) on which payment is made by Heavy Haul Rail;

"**Regulatory Requirements**" means all applicable laws, enactments, orders, regulations and other instruments relating to the Goods and/or Services, together with all relevant regulations, codes of practice and guidance imposed by any governmental, regulatory or trade body from time to time;

"**Services**" shall mean services of every kind to be performed by and/or work to be done by the Supplier under the Order;

"**Specification**" means any technical requirements or specification in relation to the Goods and/or Services, including any design, development materials, any related plans or drawings and all information which explains the structure, design, operation, functionality and all information of any description which relates to the maintenance and/or support of Goods, that is supplied to the Supplier by Heavy Haul Rail, or produced by the Supplier and agreed in writing by Heavy Haul Rail or alternatively if no Specification is agreed between the parties in writing, the standard documents made known to the Supplier by Heavy Haul Rail or vice versa as at the date of the Order;

"**Supplier**" shall mean the person or company to whom the order is addressed including its successors and approved assignees;

"**Working Day**" means a day, other than a Saturday, Sunday, or public holiday on which clearing banks in London are ordinarily open for business.

1.2. In these Conditions (unless the context otherwise requires):

1.2.1. construction of these Conditions shall ignore the headings (all of which are for reference only);

1.2.2. any reference to any legislative provision is a reference to it as amended, extended or re-enacted from time to time;

1.2.3. the expression "person" means any individual, firm, body corporate, unincorporated association, partnership, government, state or agency of a state or joint venture; and

1.2.4. the words "including", "includes" and "included" will be construed without limitation unless inconsistent with the context.

2. APPLICATION

2.1. The Contract constitutes the sole terms and conditions under which Heavy Haul Rail will purchase from the Supplier the Goods and Services specified in any Order. Heavy Haul Rail and any subsidiary undertaking in Heavy Haul Rail shall be entitled from time to time to instruct in writing the supply of any or all of the Goods and Services from the Supplier by placing an Order. The Supplier shall supply Goods in accordance with the Orders and subject to these terms and conditions. Written acceptance of an Order, or any other conduct consistent with acceptance of an Order, such as the commencement of work on the Goods or performance of the Services, shall constitute acceptance by the Supplier of the Contract.

2.2. The Contract shall apply to the exclusion of any terms and conditions of contract imposed or sought to be imposed by the Supplier at any time and any conditions attached to any quotation or otherwise subject to which an Order is accepted. The signing by Heavy Haul Rail of the Supplier's documentation shall not imply any modification of the Contract.

3. DOCUMENTATION AND DELIVERY

3.1. Delivery of the Goods and the supply of Services shall take place strictly in accordance with Heavy Haul Rail's delivery instructions whether given in the Contract, Order or separately (as the case may be), including at the address specified in the Order, during usual business hours on or by (as the case may be) the date shown. Delivery shall be at the Supplier's cost. Delivery of an Order shall be complete on the completion or unloading of the Order at the address specified for delivery.

3.2. Time is of the essence; if the Supplier does not deliver the Goods or provide Services by the time specified or otherwise in accordance with the Order, Heavy Haul Rail, in addition to its other rights, has the right to cancel the Order and shall not be responsible for any of the Supplier's costs. The Supplier must notify Heavy Haul Rail immediately if it cannot supply on time or anticipates that it will not be able to do so, and must take every possible step to supply on the original date or any later date that has been as notified by Heavy Haul Rail. Any increased costs required to

meet the original or agreed rescheduled supply time are the Supplier's responsibility.

- 3.3. Heavy Haul Rail shall have the right to change its delivery or performance instructions at any time on paying any additional reasonable costs to be incurred by the Supplier as a result of any such change provided such costs are agreed in advance in writing by Heavy Haul Rail and provided the Supplier promptly submits proper invoices, vouchers or receipts for such costs to Heavy Haul Rail. Where Heavy Haul Rail demands the postponement or suspension of a delivery date, the Supplier shall store the Goods and, with the prior written consent of Heavy Haul Rail, insure them at Heavy Haul Rail' cost against damage, destruction or other loss.
- 3.4. The Supplier shall clearly show the Order number and Heavy Haul Rail entity on all delivery notes, invoices, advice notes and other correspondence relating to the Order.
- 3.5. When no date is specified in the Order, Contract or otherwise notified by Heavy Haul Rail, the Supplier shall give Heavy Haul Rail reasonable notice of the delivery or performance date.
- 3.6. Heavy Haul Rail may cancel the Order at its sole discretion and without penalty if it is not accepted by the Supplier within 5 Working Days of the date of the Order.
- 3.7. Heavy Haul Rail shall not be deemed to have accepted any Goods until it has had a reasonable time to inspect them following delivery or after any latent defect has become apparent. For the avoidance of doubt no inspection or testing by Heavy Haul Rail whether before or after delivery of the Goods nor the signing of any delivery note or other document acknowledging physical receipt of any Goods shall be deemed to constitute or evidence acceptance or approval of the Goods for the purposes of the Sale of Goods Act 1979 (as amended) nor be deemed a waiver of Heavy Haul Rail' rights either to cancel or return all or any part thereof where the Goods are found to be defective or not in accordance with the Contract or the Order.
- 3.8. The Supplier shall promptly keep Heavy Haul Rail informed of any matter of which it is or reasonably should, as supplier of the Goods and Services, be aware relating to the storage, transportation, handling, assembly or use of the Goods or Services by Heavy Haul Rail (including legislation or advice from responsible or professional or legal bodies in respect of raw materials used in the manufacture of the Goods) and the actions it has taken or proposes to take and those that Heavy Haul Rail should take in relation to such matters.
- 3.9. The Supplier shall not deliver and/or perform by instalments unless Heavy Haul Rail so agrees in writing, in which case the Contract will be construed as a single contract in respect of each instalment. Nevertheless failure by the Supplier to deliver and/or perform any one instalment shall entitle Heavy Haul Rail at its option to treat the whole Contract as repudiated and to the remedies set out in these Conditions.

4. DESPATCH AND PACKAGING INSTRUCTIONS

- 4.1. The Goods must be packed to protect them before, during and after delivery. The Goods must also be marked in accordance with the Heavy Haul Rail' instructions and any applicable Regulatory Requirements.
- 4.2. Unless otherwise agreed, Goods shall be delivered carriage paid and containers and packing shall be supplied free by the Supplier.
- 4.3. A delivery note must be included with each Delivery.
- 4.4. Export licences, certificates of origin and any other governmental authorisations or other necessary documentation must have been obtained, and all dues and taxes must be paid by the Supplier prior to Delivery.

5. PRICE AND PAYMENT

- 5.1. All prices shown on the Order are fixed, save for any discounts or other reductions which are to be given retrospectively by the Supplier, and not subject to escalation.
- 5.2. Unless otherwise agreed in writing a separate invoice must be rendered against each Order. The Supplier shall be entitled to invoice Heavy Haul Rail for each Order on or at any time after Delivery and prior to any date reasonably notified to the Supplier by Heavy Haul Rail from time to time.
- 5.3. The price shall be inclusive of all packaging, packing, labelling, insurance and delivery costs and all other costs incurred by the Supplier in relation to the Goods and their delivery unless otherwise specified in the Order.

- 5.4. All sums payable under the Contract are exclusive of VAT, which shall be added if appropriate at the rate prevailing at the relevant tax point, but inclusive of any other applicable tax or duty payable upon such sums.
- 5.5. All invoices must, where applicable, be valid VAT invoices, include such supporting information as is required by Heavy Haul Rail to verify the accuracy of the invoice and state the Order number and correct Heavy Haul Rail entity to which they relate.
- 5.6. Heavy Haul Rail's preferred method of invoicing is electronic invoicing ("e-invoicing"). Unless otherwise agreed by Heavy Haul Rail in writing the Supplier shall use the specified e-invoicing procedure as notified to it by Heavy Haul Rail from time to time. The Supplier shall continue to use the prescribed e-invoicing procedure for the duration of the Contract and agrees to comply with the terms and conditions of such e-invoicing.
- 5.7. Upon Heavy Haul Rail' written consent the Supplier may submit invoices by e-mail to fiaccounts payable@gwrr.com or any other address as notified by Heavy Haul Rail from time to time.
- 5.8. Failure of the Supplier to comply with the requirements in this Condition 5 shall entitle Heavy Haul Rail to return the invoice, unpaid, to the Supplier.
- 5.9. Heavy Haul Rail shall process payment of an invoice by the last day of the month following the month in which a valid VAT invoice is received in accordance with the Contract. Payment shall be made to the bank account nominated in writing by the Supplier. Should the Supplier's nominated bank account details change at any point during the term of the Contract, the Supplier shall send a letter confirming the new bank details on letter headed paper and in PDF format to sscapenquiries@gwrr.co.uk
- 5.10. Failure of the Supplier to comply with this requirement will result in payment either being withheld or being made to the Supplier's previously listed bank account in which case Heavy Haul Rail shall not be liable for any direct, indirect or consequential loss resulting from this and Heavy Haul Rail shall be deemed to have satisfied its requirement to make such payment to the Supplier.
- 5.11. The Supplier acknowledges that the payment terms set out in this Condition 5 have been taken into account in price negotiations between the parties and acknowledges that these payment terms are reasonable. The parties agree that these payment terms are effective for the duration of the Contract unless otherwise agreed in writing by the parties, and any reduction to these payment terms will entitle Heavy Haul Rail to renegotiate the price for the Goods or Services or immediately terminate the Contract.
- 5.12. In the event Heavy Haul Rail fails to pay any undisputed amount due to the Supplier on the due date in accordance with Condition 5.9 above, if the undisputed amount remains unpaid following at least 7 days' notice from the Supplier, interest shall be added to such amount at the rate of 2% over the base rate of the Bank of England for the period from and including the day after the due date until the date of payment.
- 5.13. Nothing shall oblige Heavy Haul Rail to accept or pay for Goods and Services in excess of or less than Goods and Services covered by an Order and Heavy Haul Rail may return, at the Supplier's cost, any such Goods.
- 5.14. Any money paid by Heavy Haul Rail to the Supplier in respect of any Goods and Services rejected under the Contract together with any additional expenditure over and above the price specified in the Order reasonably incurred by Heavy Haul Rail in obtaining other goods and services in replacement of any rejected Goods and Services shall be paid by the Supplier to Heavy Haul Rail within fourteen (14) days of the date of Heavy Haul Rail' notice demanding the same or, at Heavy Haul Rail' sole option, shall be deducted from the money still to be paid by Heavy Haul Rail to the Supplier in relation to and other Goods and Services Ordered.
- 5.15. Heavy Haul Rail shall be entitled to set off against the price any sums owed to Heavy Haul Rail by the Supplier under this or any other agreement.
- 5.16. Payment for any Goods or Services is not indicative of acceptance and is without prejudice to Heavy Haul Rail' rights generally under these Conditions.

6. TITLE AND RISK

Risk and title in Goods shall pass to Heavy Haul Rail upon Delivery (without prejudice to any right of rejection which Heavy Haul Rail may have under the Contract or by law) unless payment has already been made, in which case title shall pass upon payment. Heavy Haul Rail reserves the right, on giving notice, to inspect the Goods at any reasonable time at the premises where the Goods are manufactured or stored.

7. DEFECTS AFTER DELIVERY

- 7.1. In addition to any other rights or remedies of Heavy Haul Rail:-
 - 7.1.1. the Supplier shall promptly make good at its cost by repair or replacement, defects or any shortfall in the Goods and/or Services occurring within: (a) twenty-four (24) months of Delivery for rolling stock components and safety-critical systems; (b) eighteen (18) months of Delivery for mechanical and electrical equipment; (c) twelve (12) months of Delivery for all other Goods and Services; caused by defective design, materials or workmanship; and
 - 7.1.2. the Supplier shall be responsible for the costs of any dismantling, removal and reinstallation necessary to correct any defect or shortfall and making good any damage or loss caused by such works.

8. WARRANTY AND LIABILITY

- 8.1. In addition to the terms implied by the Sale of Goods Act 1979 or the Supply of Goods and Services Act 1982 as amended by the Sale and Supply of Goods Act 1994, the Supplier warrants that the Goods and Services (including any packaging and transport) provided shall:
 - 8.1.1. strictly comply with the descriptions and specifications contained or referenced in the Order;
 - 8.1.2. strictly comply with (and in the course of supply the Supplier shall strictly comply with) all Regulatory Requirements, and shall notify Heavy Haul Rail immediately of any actual or suspected breach;
 - 8.1.3. not in any way infringe the rights of any third parties;
 - 8.1.4. be free from all defects, including latent defects, defects in design, material and workmanship, and be fit for their purpose, including any purpose that Heavy Haul Rail has made known to the Supplier expressly or by implication or of which the Supplier ought reasonably be aware; and
 - 8.1.5. match the quality of any sample approved by Heavy Haul Rail.
- 8.2. The Supplier warrants its expertise and confirms the accuracy of all statements and representations made in respect of the Goods and/or Services prior to the submission of each Order and acknowledges Heavy Haul Rail' reliance upon those statements.
- 8.3. The Supplier warrants that its obligations will be performed by appropriately qualified and trained personnel, with due care and diligence and to such high standard of quality as it is reasonable for Heavy Haul Rail to expect in all the circumstances. In addition the Supplier shall operate a suitable quality assurance or other system for inspection and quality control in the preparation of and manufacture of the Goods and for the performance of the Services.
- 8.4. The Supplier shall indemnify Heavy Haul Rail in full against all liability or alleged liability to third parties and all loss, liabilities, costs and expenses arising from or in connection with the Supplier's breach of the Contract or any negligence or other default by itself, its agents or employees, including loss, liability and expense in respect of (i) claims that the Goods or Services infringe any of the Intellectual Property Rights of any third party (save and to the extent that such claims are directly attributable to Heavy Haul Rail' design or specifications). The Supplier's obligation to indemnify Heavy Haul Rail will survive the expiration or termination for any reason of these Conditions.
- 8.5. The Supplier shall provide all equipment, tools and vehicles and such other items as are required to provide the Goods and Services.
- 8.6. The Supplier shall provide all facilities, assistance and advice required by Heavy Haul Rail and its insurers for the purpose of contesting or dealing with any action, claim or matter arising out of the Supplier's performance, or purported performance of, or failure to perform, the Contract.
- 8.7. Nothing in this Contract shall limit or exclude either party's liability for: (a) death or personal injury caused by negligence; (b) fraud or fraudulent misrepresentation; (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979; (d) defective products under the Consumer Protection Act 1987; or (e) any other liability which cannot be limited or excluded by applicable law. Subject to the above, the Supplier's total aggregate liability under this Contract shall be unlimited and shall include all direct, indirect, consequential, and economic losses.

9. BREACH, TERMINATION AND SUSPENSION

- 9.1. Heavy Haul Rail may, in the event of a failure by the Supplier to comply with the Contract, take any one or more of the following courses of action without prejudice to any other right it may have (and whether or not it has accepted the Goods or Services):-

- 9.1.1. recover damages for the delay or non-delivery of the Goods and Services or for their non-conformance with the Contract (including the reasonable costs of purchasing any replacement Goods or Services);
- 9.1.2. reject and return any faulty or defective Goods, at the expense of the Supplier, and receive a full refund;
- 9.1.3. return any faulty or defective Goods for repair or replacement by and at the expense of the Supplier;
- 9.1.4. repair any faulty or defective Goods itself at the expense of the Supplier;
- 9.1.5. require the Supplier to remedy any defect in the Services or re-perform the Services at the expense of the Supplier;
- 9.1.6. carry out any work, at the expense of the Supplier, necessary to make the Services comply with the Contract;
- 9.1.7. refuse to accept any further deliveries of the Goods and/or performance of the Services which the Supplier attempts to make;
- 9.1.8. where it has paid in advance for the Goods and/or Services that have not been delivered or provided in accordance with the terms of the Contract, have such sums refunded by the Supplier; and / or
- 9.1.9. terminate the Contract without liability to the Supplier.
- 9.2. Heavy Haul Rail may terminate the Contract by written notice without payment of any amount or penalty if there is a change in the Control of the Supplier to which Heavy Haul Rail objects, provided that Heavy Haul Rail serves its notice within three months of the date on which the Supplier informs Heavy Haul Rail (by written notice) of the change of Control or on which Heavy Haul Rail otherwise becomes aware of the change of Control.
- 9.3. In addition to the foregoing, either party may terminate the Contract immediately on written notice:-
 - 9.3.1. if there is a material breach by the other party which it has not remedied (if capable of remedy) within 14 calendar days of being given notice to do so;
 - 9.3.2. if the other party is repeatedly in breach and having been given notice that any further breach may result in termination, is in breach again;
 - 9.3.3. if the other party becomes insolvent, suffers the appointment of a receiver, commences bankruptcy or winding up proceedings or suffers such proceedings to be commenced or otherwise ceases or threatens to cease to carry on business;
 - 9.3.4. if it reasonably apprehends that any of the events listed in Condition 9.3.3 is likely to occur in relation to the other party.
- 9.4. Where both Goods and Services are to be supplied under the Contract, in any of the circumstances in which Heavy Haul Rail may, under these Conditions, terminate the Contract Heavy Haul Rail may instead terminate part of the Contract in respect of the Goods or in respect of the Services and the Contract shall continue in respect of the remaining supply.
- 9.5. On termination of the Contract, the Supplier will, as notified by Heavy Haul Rail, either refund advance payments for Goods and Services not yet supplied or complete the supply of such Goods and Services in accordance with the relevant Order(s) on the terms of the Contract. On request, on termination, or at any other time, each party will return or destroy any property (including Confidential Information) belonging to the other party (and certify that it has done so). Heavy Haul Rail shall have the right to retake possession of its property at any time by entry onto any land or premises where it is kept.
- 9.6. The termination of the Contract shall be without prejudice to the rights and remedies of either party which may have accrued up to the date of termination.
- 9.7. Upon termination of the Contract for any reason whatsoever any provision which expressly or by implication is intended to come into or remain in force on or after termination shall continue in full force and effect.
- 9.8. Nothing in the Contract shall prevent either party seeking urgent relief before the Courts.

10. CONFIDENTIALITY

- 10.1. Both parties shall and shall procure that its employees shall with effect from the date of the Contract and afterwards as an on-going obligation treat as confidential all Confidential Information and shall not disclose it to any third party without the other party's prior written consent or use it for any purpose whatsoever other than as strictly necessary for the proper performance of its obligations under the Contract. The obligations set out in this Condition 10 shall not apply to information which is or becomes available to the other party otherwise than from any member of either party or its group and free of any restrictions as to its use or disclosure or is required to be disclosed by law or a court of competent jurisdiction.
- 10.2. Notwithstanding the fact that the Supplier may have or have had business dealings with Heavy Haul Rail, members of the Heavy Haul Rail and/or its associated businesses, Heavy Haul Rail name and its associated businesses shall not be used by the Supplier for the purposes of advertisement or publicity without the prior written consent of Heavy Haul Rail.
- 10.3. Nothing in the Contract shall operate to prevent Heavy Haul Rail from disclosing any information relating to the Contract to any: associate of Heavy Haul Rail; or a member within the Heavy Haul Rail.

11. INSURANCE

- 11.1. During this Contract and for a period of 6 years afterwards the Supplier shall have and maintain in force the following insurances with reputable insurance companies, providing cover for all jurisdictions where the Goods and/or Services are to be provided at its own cost:
 - 11.1.1. employers' liability insurance for a minimum of GBP £5 million, or local equivalent per claim (if applicable in the jurisdictions where Services are performed or Goods are produced);
 - 11.1.2. general liability (public liability insurance, including bodily injury, property damage and product liability) for a minimum of GBP £5 million, or local equivalent, for each occurrence, and not less than GBP £5 million in the aggregate for all claims arising in any year;
 - 11.1.3. all risk property insurance (including third-party property in care, custody and control) in sufficient amounts to ensure recovery of the Price relating to the Goods purchased by Heavy Haul Rail in the event of a loss whilst the Goods are held by the Supplier at its storage location or at any outside storage location. This requirement can be fulfilled by ensuring the Supplier has sufficient cover under the extension for third-party property in its care, custody and control as part of its general liability insurance policy;
 - 11.1.4. professional indemnity insurance for not less than GBP £5 million or local equivalent per claim; and
 - 11.1.5. such other insurances as the Supplier deems appropriate in order to meet its obligations under this Contract or as are required by law or contract.

12. DATA USE AND DISCLOSURE

- 12.1. Heavy Haul Rail may use any information provided by the Supplier for the purposes of administration, analysis, compilation of statistics, for carrying out Heavy Haul Rail obligations under the Contract and for such other ancillary purposes. The Supplier acknowledges and agrees that Heavy Haul Rail may disclose such information to any associate of Heavy Haul Rail; or any member of the Heavy Haul Rail which in some instances may be located outside the European Economic Area, such as Switzerland, India, Canada, the US and Costa Rica.
- 12.2. The Supplier acknowledges and agrees that Heavy Haul Rail may carry out certain searches to establish the Supplier's solvency status and may use the information obtained for the purposes of administration, credit checking, debt tracing and fraud prevention.

13. PROTECTION OF PERSONAL DATA

- 13.1. For the purposes of this Condition 13, the terms "**Data Controller**", "**Data Processor**", "**Data Subject**", "**Personal Data**", "**Personal Data Breach**", and "**Process/Processing**" shall have the same meaning as described in the Data Protection Legislation.
- 13.2. The parties agree that all Personal Data obtained and Processed hereunder will be treated in accordance with the provisions of the Data Protection Legislation and all applicable Regulatory Requirements relating to the processing of personal data and privacy.
- 13.3. Insofar as the Supplier Processes Personal Data for Heavy Haul Rail as a Data Processor, the Supplier shall:
 - 13.3.1. Process the Personal Data solely on the documented instructions

of Heavy Haul Rail, and as prescribed by the Order, including with regard to transfers of Personal Data to a third country outside the EU or an international organisation (unless required by EU, Member State or UK law to act without such instructions, in which case the Supplier shall, except where prohibited by law from doing so, inform Heavy Haul Rail of that legal requirement before Processing);

- 13.3.2. be generally authorised to engage another Processor to Process the Personal Data ("**Subprocessor**"), subject to the Supplier meeting the conditions set out in Article 28 (2) and (4) of the GDPR;
- 13.3.3. notify Heavy Haul Rail without undue delay of any Personal Data Breach, and in any event provide such notice within 24 hours of the Supplier becoming aware of the same, such notice to include all information reasonably required by Heavy Haul Rail to comply with its obligations under the Data Protection Legislation;
- 13.3.4. assist Heavy Haul Rail with its obligations pursuant to Articles 32 to 36 of the GDPR taking into account the nature of the Processing and information available to the Supplier;
- 13.3.5. cease Processing the Personal Data upon the termination or expiry of this Contract and at Heavy Haul Rail' option, either return or delete all copies of the Personal Data Processed by the Supplier unless (and solely to the extent and for such period as) EU, Member State or UK law requires storage of the Personal Data;
- 13.3.6. promptly notify Heavy Haul Rail of any communication from a Data Subject regarding the Processing of Personal Data, or any other communication (including from a supervisory authority) relating to Heavy Haul Rail' obligations under the Data Protection Legislation in respect of the Personal Data and, taking into account the nature of the Processing, assist Heavy Haul Rail by appropriate technical and organizational measures, insofar as this is possible, for the fulfilment of Heavy Haul Rail' obligation to respond to requests for exercising the data subject's rights laid down in Chapter III GDPR; and
- 13.3.7. make available to Heavy Haul Rail on request all information necessary to demonstrate compliance with this Contract and with Article 28 of the GDPR and shall allow for and contribute to audits, including inspections, by Heavy Haul Rail or an auditor mandated by Heavy Haul Rail.
- 13.4. If applicable to the Service, the subject matter and duration of the Processing are set out in the Contract (including the Order) and this Condition. The nature and purpose of the Processing pursuant to the Contract are the use of Heavy Haul Rail' customer and/or employee data in order to fulfil orders. The type of Personal Data Processed pursuant to the Contract is customer and/or employee names and addresses. The categories of Data Subject whose Personal Data is Processed pursuant to the Contract are customers of Heavy Haul Rail, consumers of Heavy Haul Rail, third parties providing services to Heavy Haul Rail and/or employees of Heavy Haul Rail. The obligations and rights of Heavy Haul Rail are set out in the Contract and this Condition.

14. INTELLECTUAL PROPERTY RIGHTS

- 14.1. The Supplier warrants, represents and undertakes that it shall use the Heavy Haul Rail Intellectual Property Rights:
 - 14.1.1. solely for the purpose of providing the Goods and/or Services to Heavy Haul Rail; and
 - 14.1.2. in accordance with Heavy Haul Rail's instructions from time to time.
- 14.2. Subject to Condition 14.6, the Supplier hereby assigns to Heavy Haul Rail or any other member of the Heavy Haul Rail nominated by Heavy Haul Rail, with full title guarantee, free from all liens, charges, encumbrances and third party rights, all Intellectual Property Rights in the Goods and/or Services.
- 14.3. The Supplier shall, without charge to Heavy Haul Rail, obtain irrevocable waivers of all moral rights in the Goods and/or Services to which any individual is now or may be at any future time entitled under Chapter IV of Part I of the Copyright Designs and Patents Act 1988 or any similar provisions of law in any jurisdiction.
- 14.4. The Supplier shall, promptly at Heavy Haul Rail's request, without charge to Heavy Haul Rail, do (or procure to be done) all such further acts and things and the execution of all such other documents as Heavy Haul Rail may from time to time require for the purpose of securing for Heavy Haul Rail the full benefit of the Contract, including all right, title and interest in and to the rights in the Intellectual Property Rights assigned or to be assigned to Heavy Haul Rail or any other member of the Heavy Haul Rail nominated by Heavy Haul Rail in accordance with Condition 14.2.
- 14.5. The Supplier warrants, represents and undertakes that:
 - 14.5.1. the Goods and the receipt, use and supply thereof will not infringe any third party Intellectual Property Rights; and

14.5.2. the Services and the receipt and supply thereof will not infringe any third party Intellectual Property Rights.

14.6. Where the Supplier uses Intellectual Property Rights which are not Heavy Haul Rail Intellectual Property Rights ("Third Party IPR"):

14.6.1. the Supplier is solely responsible for obtaining all necessary licences, assignments and/or consents for such use of Third Party IPR as the Supplier and/or Heavy Haul Rail require as a result of the Contract and/or in connection with the Goods and/or Services;

14.6.2. the Supplier shall provide Heavy Haul Rail with written details of the scope (including, but not limited to, territory, term and media) of such licences, rights or assignments in order that Heavy Haul Rail may use such Third Party IPR;

14.6.3. the Supplier shall ensure that each such licence, right and assignment is:

14.6.3.1. enforceable by Heavy Haul Rail and each member of the Heavy Haul Rail as if they were a party to it; and

14.6.3.2. freely assignable at any time (without cost, limitation or restriction) to Heavy Haul Rail and/or its nominee.

14.6.4. notwithstanding Condition 14.6.2 or Condition 14.6.3, Heavy Haul Rail accepts no responsibility for the use of Third Party IPR by Heavy Haul Rail and/or the Supplier, nor does Heavy Haul Rail accept any responsibility for the use of Third Party IPR in any Goods and the foregoing shall not reduce or otherwise affect the Supplier's obligations under the Contract;

14.6.5. without prejudice to any other rights and remedies that Heavy Haul Rail may have, Heavy Haul Rail may directly enter into a licence or assignment to use Third Party IPR. In such event, Heavy Haul Rail shall give the Supplier details of the scope of such licences or assignment to use such Third Party IPR and to the extent that obligations are imposed on Heavy Haul Rail under such licences or assignments and the obligations relate to the use of the Third Party IPR by the Supplier, the Supplier will assume responsibility for such obligations and will be liable to Heavy Haul Rail as if the Supplier were a party to the licence and/or assignment in place of Heavy Haul Rail.

14.7. The Supplier shall not anywhere in the world during the Contract and thereafter apply for the registration of, or make a claim to rights in any of the Heavy Haul Rail Intellectual Property Rights, or in any other trade mark, service mark or corporate name which includes, imitates or is otherwise confusingly similar to any of the Heavy Haul Rail Intellectual Property Rights.

14.8. The Supplier shall promptly inform Heavy Haul Rail if it becomes aware of any suspected unauthorised use of the Heavy Haul Rail Intellectual Property Rights, or any Intellectual Property Right which is confusingly similar to the Heavy Haul Rail Intellectual Property Rights and/or Third Party IPR. Heavy Haul Rail shall take whatever action (if any) it deems necessary in the circumstances and shall have sole conduct of any resulting proceedings. The Supplier shall, at Heavy Haul Rail's request provide to Heavy Haul Rail all such documents and assistance as Heavy Haul Rail may require in relation to such proceedings or otherwise to limit, stop and/or prevent such unauthorised use. The costs incurred and damages recovered in any such proceedings shall be for the account of Heavy Haul Rail. The Supplier shall not have any right to initiate proceedings in relation to unauthorised use of Heavy Haul Rail Intellectual Property Rights without Heavy Haul Rail's prior written consent.

14.9. No rights to or licenses of Heavy Haul Rail Intellectual Property Rights and/or Third Party IPR are conferred on the Supplier except for those expressly set out in the Contract. No such rights or licenses shall survive the termination of the Contract, regardless of the manner of the circumstances surrounding such termination.

14.10. The Supplier shall ensure that each of its employees, professional advisers, agents and sub-contractors comply with the terms of this Condition 14 as if each of them were a party to the Contract and any breach by any such person shall be deemed to be a breach by the Supplier.

14.11. Any Specification, together with the Intellectual Property Rights in the Specification, shall be the exclusive property of Heavy Haul Rail. The Supplier shall not disclose to any third party or use any such Specification except to the extent that it is required for the purpose of the Contract or becomes public knowledge through no fault of the Supplier.

to the extent that it is required for the purpose of the Contract or becomes public knowledge through no fault of the Supplier.

15. HEALTH, SAFETY AND ENVIRONMENT

15.1. The Supplier will take any steps specified by Heavy Haul Rail from time to time in addition to such other steps as are necessary to ensure that the Goods will be safe and without risks to health at all

times when they are being collected, delivered, stored, used, consumed, checked, cleaned or maintained by any person at work, or when they are being dismantled or disposed of.

15.2. The Supplier shall, and shall procure that its employees, contractors and agents are competent in the performance of the Services and/or supply of the Goods and shall, at all times comply with all Regulatory Requirements, codes of practice, and industry best practice relating to the handling, storage, sale and marketing of the Goods and supply of Services.

15.3. When on the premises of Heavy Haul Rail or any of its agents, the Supplier shall observe all applicable health, safety and environmental rules and regulations and any other security requirements that apply from time to time.

15.4. The Supplier shall notify Heavy Haul Rail as soon as possible of any prosecutions and/or fines which may have a material impact to this Agreement and/or Heavy Haul Rail's reputation or business operation.

15.5. The Supplier will continuously seek opportunities to reduce its carbon emissions, and will report carbon emissions associated with the goods, activities and services undertaken on behalf of Heavy Haul Rail to Heavy Haul Rail at Heavy Haul Rail's request.

15.6. The Supplier shall:

15.6.1. set and work towards science-based carbon reduction targets;

15.6.2. provide annual carbon footprint reports for Goods and Services supplied to Heavy Haul Rail;

15.6.3. comply with Heavy Haul Rail's Sustainable Procurement Policy as notified from time to time;

15.6.4. source materials responsibly and maintain chain of custody certification where applicable;

15.6.5. eliminate single-use plastics from packaging where reasonably feasible.

15.7. Heavy Haul Rail may conduct sustainability audits of the Supplier's operations and require improvement plans for non-compliance with the requirements of this Condition 15.

15.8. Persistent failure to meet sustainability requirements may result in termination under Condition 9.3.1.

16. EMPLOYEES

16.1. It is the intention of the parties that the termination or expiry of this Contract and/or the Services (whether in whole or part) will not constitute a "relevant transfer" for the purposes of TUPE. The Supplier acknowledges that it is engaged by other customers in addition to Heavy Haul Rail and undertakes that it will take all steps to ensure that its personnel are not organised in such a way that their principal purpose (whether collectively or individually) is the carrying out of the Services (whether in whole or part) during the Term.

16.2. If, however, on the termination or expiry of this Contract and/or the Services (whether in whole or in part) for whatever reason (whether by reason of TUPE or otherwise) any employment or any contract of employment relating to any of the Supplier's employees has effect or is claimed to have effect as if originally made between Heavy Haul Rail or a successor supplier and that person makes a claim against Heavy Haul Rail ("**Transferring Employee**") then:

16.2.1. Heavy Haul Rail shall notify the Supplier in writing as soon as practicable of becoming aware of a Transferring Employee;

16.2.2. the Supplier shall indemnify and keep indemnified Heavy Haul Rail and any successor supplier against all losses, damages, liabilities, claims, penalties, costs, expenses (including reasonable legal expenses) suffered or incurred by Heavy Haul Rail and/or any successor supplier arising out of or in connection with any claim or other legal recourse (of whatever nature) by any Transferring Employee relating to any fact or matter concerning or arising from their employment (whether with the Supplier, with Heavy Haul Rail and / or with any successor supplier) or its termination including but not limited to:

16.2.2.1. all and any liabilities and obligations in relation to the Transferring Employees for the period up to and including the termination of the Transferring Employees' employment (whether before or after the date of termination of this Contract);

16.2.2.2. all and any liabilities, obligations and claims arising from any Transferring Employee's contract of employment including (without limitation) its termination); and

16.2.2.3. any failure to inform and consult appropriate representatives or otherwise comply in all respects with Regulations 13 and 14 of TUPE.

17. AUDIT

- 17.1. Heavy Haul Rail shall have the right to examine the Supplier's books and records relating to the supply of Goods and/or Services for the purposes of ascertaining that the information which is being provided to Heavy Haul Rail has been provided accurately and for the purposes of carrying out an audit of the Supplier's compliance with this Contract, including all activities of the Supplier, the performance, security and integrity of the Supplier in providing the Services under this Contract.
- 17.2. For that purpose the Supplier hereby grants to Heavy Haul Rail and its professional advisers a right of access to the Supplier's premises, systems and information on the giving of reasonable notice during normal business hours, save in the case of an emergency where no such reasonable notice can be given.
- 17.3. Heavy Haul Rail and its professional advisers shall have the right to take copies of any financial books and records they reasonably require and the Supplier shall provide all necessary facilities free of charge.

18. FORCE MAJEURE

- 18.1. In this Condition 18, "Force Majeure Event" means an event beyond the control of a Party (or any person acting on its behalf), which by its nature could not have been foreseen by such Party (or such person), or, if it could have been foreseen, was unavoidable, and consists exclusively of acts of God, severe storms, acts of war, or acts of terrorism.
- 18.2. If either party is delayed or prevented in the performance of any of its obligations under the Contract by a Force Majeure Event, that party will not be liable for such delay or non-performance and the time for performance of the affected obligation shall be extended by such period as is reasonable to enable that party, using all reasonable endeavours, to perform that obligation. During the continuance of any Force Majeure Event which affects the Supplier, Heavy Haul Rail may suspend any Orders.
- 18.3. If the Force Majeure Event in question continues for more than 8 weeks, Heavy Haul Rail may give written notice to the Supplier to terminate the Contract.

19. ASSIGNMENT AND SUBCONTRACTING

- 19.1. No assignment or sub-contracting of the Contract or any part thereof is permitted without the prior written agreement of the other party, except for an assignment by Heavy Haul Rail to any member of the Heavy Haul Rail Group. Agreement by Heavy Haul Rail to subcontracting is dependent on all terms of the Contract being included in any sub-contract and does not relieve the Supplier of any of its obligations towards Heavy Haul Rail.

20. COMPLIANCE AND SUPPLIER STANDARDS

- 20.1. The Supplier shall:
 - 20.1.1. comply with all Regulatory Requirements including those relating to anti-bribery and anti-corruption (including the UK Bribery Act 2010, US Foreign Corrupt Practices Act and any other similar laws in the relevant territory);
 - 20.1.2. obtain and maintain all necessary licenses and permits required to supply the Goods and Services, operate its business, comply with all Regulatory Requirements and any required tax identification and labelling requirements.
 - 20.1.3. not do or omit to do anything which may cause Heavy Haul Rail to lose any licence or permit upon which it relies for the purposes of conducting its business and the Supplier acknowledges that Heavy Haul Rail may rely or act on the Services;
 - 20.1.4. ensure that it, and its employees, officers, agents, sub-contractors and any other person who performs services within the Supplier's supply chain, complies with all Regulatory Requirements relating to anti-slavery and human trafficking including those set out within the Modern Slavery Act 2015 ("Anti-Slavery Requirements") and the Supplier will not take or knowingly permit any action to be taken that would or might cause or lead Heavy Haul Rail to be in violation of any Anti-Slavery Requirement;
 - 20.1.5. not engage in any transactions with: (i) any person, company, or any other entity that appears on the list of Specially Designated Nationals and Blocked Persons, Appendix A to the Foreign Assets Control Regulations of the United States Treasury Department, 31 C.F.R., Subtitle B, Chapter V, as amended (the "OFAC Regulations"); (ii) any country, including any political subdivision, agency, or instrumentality thereof, against which the United States maintains economic sanctions or embargoes under the OFAC Regulations or Executive Order 13224 - Blocking Property and prohibiting Transactions with Persons who Commit, Threaten to Commit, or Support Terrorism effective September 24, 2011 ("Executive Order"), as amended from time to time; (iii) nationals of countries against which the United States maintains economic sanctions or embargoes, when required under the OFAC Regulations or Executive Order; (iv)

a person acting or purporting to act, directly or indirectly, on behalf of, or an entity owned or controlled by, any government, individual, or group against which the United States maintains economic sanctions or embargoes under the OFAC Regulations or Executive Order; (v) a person who is described in section 1 of the Executive Order; (vi) a person on any other list of terrorists or terrorist organizations maintained pursuant to any of the rules or regulations of OFAC or pursuant to any other executive order; or (vii) a person in violation of any other laws or U.S. executive order of similar import, as each such law has been or may be amended, adjusted, or modified, or reviewed from time to time.

- 20.1.6. not engage in any activity, practice or conduct which would constitute either:
 - 20.1.6.1. a UK tax evasion facilitation offence under section 45(5) of the Criminal Finances Act 2017; or
 - 20.1.6.2. a foreign tax evasion facilitation offence under section 46(6) of the Criminal Finances Act 2017;
- 20.1.7. have and shall maintain in place throughout the term of this agreement such policies and procedures as are both reasonable to prevent the facilitation of tax evasion by another person (including without limitation employees of the Supplier) and to ensure compliance with clause 20.1.6;
- 20.1.8. notify the Heavy Haul Rail in writing if it becomes aware of any breach of clause 20.1.6 or has reason to believe that it or any person associated with it has received a request or demand from a third party to facilitate the evasion of tax within the meaning of Part 3 of the Criminal Finances Act 2017, in connection with the performance of this agreement;
- 20.1.9. within 3 months of the date of this agreement, and annually thereafter, certify to the Heavy Haul Rail in writing signed by an officer of the Supplier, compliance with this Condition 20.1.6 by the Supplier and all persons associated with it under 20.2. The Supplier shall provide such supporting evidence of compliance as the Heavy Haul Rail may reasonably request.

- 20.2. For the purposes of clause 20.1, the meaning of reasonable prevention procedure shall be determined in accordance with any guidance issued under section 47 of the Criminal Finances Act 2017 and a person associated with the Supplier includes but is not limited to any subcontractor of the Supplier.
- 20.3. The Supplier shall comply with Heavy Haul Rail's Supplier Code of Conduct and Sustainability Charter (as amended from time to time) which can be accessed from <https://www.heavyhaulrail.co.uk/terms-and-conditions-of-business/> (the "Code of Conduct").
- 20.4. The Supplier shall procure that any other persons associated with it in connection with the Contract shall comply with requirements of this Condition 20 and the Supplier Standards.
- 20.5. The Supplier warrants and confirms both now and on an ongoing basis that it is and will continue to be compliant with this Condition 20 and shall keep Heavy Haul Rail fully indemnified against all costs, claims, actions, expenses, losses or liabilities (including without limitation, economic loss and loss of profit (direct or indirect), indirect loss or consequential loss) resulting directly or indirectly from the Supplier's failure to comply with the terms set out in this Condition 20.
- 20.6. The Supplier agrees that in addition to Heavy Haul Rail' termination rights set out elsewhere in these Conditions, Heavy Haul Rail may (without prejudice to any other right available to it) immediately terminate the Contract in the event of any breach of this Condition 20 by the Supplier

21. MISCELLANEOUS PROVISIONS

- 21.1. No variation to the Contract or these Conditions shall be binding unless agreed in writing between the authorised representatives of the Supplier and Heavy Haul Rail.
- 21.2. Nothing in the Contract shall create, or be deemed to create, a partnership or joint venture or relationship of employer and employee or principal and agent between the parties.
- 21.3. A failure to exercise, or delay in exercising a right, power or remedy provided to Heavy Haul Rail by these Conditions or by law does not constitute a waiver of that, or any other, right, power or remedy and shall not (and nor shall any single or partial exercise of any such right, power or remedy) preclude the further exercise of that, or any other, right, power or remedy. Any waiver by Heavy Haul Rail of any breach of, or any default under, any provision of the Contract by the Supplier will only be effective if in writing and will not be deemed a waiver of any subsequent breach or default and will in no way affect the other terms of the Contract.
- 21.4. The Supplier agrees that the fact that one or more Orders have been placed by Heavy Haul Rail with the Supplier shall not entitle the Supplier to any future Order or Orders from Heavy Haul Rail nor any damages or

other form of relief from Heavy Haul Rail arising out of Heavy Haul Rail not placing any future Orders with the Supplier and the Supplier waives and forgoes any and all rights in this regard which it may have or which may otherwise arise under whatever theory of Law.

- 21.5. Any notice given by one party to the other must be in writing and may be delivered: (i) personally; or (ii) by pre-paid first class post. Notices shall be delivered or sent to the last known addresses of the parties or to any other address notified in writing by one party to the other for the purpose of receiving notices in connection with a Contract. Each party may specify by notice to the other a particular individual or office holder to whom any notices served on it are to be addressed, in which case a notice shall not be validly given unless so addressed. Notices will be deemed duly served: (i) if delivered personally then the next Working Day after delivery; and (ii) if sent by pre-paid first class post, two Working Days after posting.
- 21.6. Any member of the Heavy Haul Rail may enjoy the benefit of and enforce the provisions of these Conditions and any Contract (including by placing Orders) in accordance with the provisions of the Contracts (Rights of Third Parties) Act 1999 as if they were Heavy Haul Rail.
- 21.7. Except as otherwise provided in Condition 21.6, the provisions of these Conditions and any Contract may be enforced only by a party to it and the operation of the Contracts (Rights of Third Parties) Act 1999 is excluded in relation to all third parties.
- 21.8. If any of these Conditions is or becomes illegal, invalid or unenforceable, such illegality, invalidity or unenforceability shall not affect the other Conditions which shall remain in full force and effect.
- 21.9. The Contract and any issues, disputes or claims arising out of or in connection with it or its subject matter or formation (whether contractual or non-contractual in nature such as claims in tort, from breach of statute or regulation or otherwise) shall be governed by, and construed in accordance with, the laws of England and Wales.
- 21.10. The United Nations Convention on Contracts for the International Sale of Goods does not apply to the Contract
- 21.11. All disputes or claims arising out of or relating to the Contract shall be subject to the exclusive jurisdiction of the English and Welsh courts to which the parties irrevocably submit.

22. SECURITY

- 22.1. Heavy Haul Rail may require the Supplier to provide, at the Supplier's cost:
- 22.1.1. a performance bond from a financial institution approved by Heavy Haul Rail for up to 10% of the total Contract value; and/or
- 22.1.2. a parent company guarantee in a form approved by Heavy Haul Rail where the Supplier is part of a larger corporate group.
- 22.2. Heavy Haul Rail may call on such security in the event of Supplier breach of Contract, insolvency, or failure to perform its obligations under the Contract.
- 22.3. The Supplier shall maintain such security in full force and effect throughout the term of the Contract and for such additional period as Heavy Haul Rail may reasonably require.

23. PERFORMANCE STANDARDS

- 23.1. The Supplier shall meet all Key Performance Indicators (KPIs) and Service Level Agreements (SLAs) specified in the Order or otherwise agreed in writing between the parties.
- 23.2. Failure to meet KPIs or SLAs shall entitle Heavy Haul Rail to:
- (a) service credits calculated as a percentage of the relevant Order value as specified in the Order or otherwise agreed in writing;
- (b) require the Supplier to submit a performance improvement plan within 10 Working Days setting out remedial actions;
- (c) terminate the Contract for persistent failure, being three or more breaches of KPIs or SLAs in any 6-month period.
- 23.3. Service credits shall be applied automatically and do not constitute Heavy Haul Rail's sole or exclusive remedy for failure to meet performance standards.

24. BUSINESS CONTINUITY

- 24.1. The Supplier shall maintain and regularly test business continuity and disaster recovery plans to ensure continuous supply of Goods and Services in accordance with the Contract.
- 24.2. The Supplier shall provide Heavy Haul Rail with:
- 24.2.1. copies of its business continuity plans upon request;
- 24.2.2. immediate notification of any event, incident or circumstance affecting or likely to affect its ability to perform its obligations under the Contract;
- 24.2.3. details of backup suppliers and alternative supply arrangements.
- 24.3. The Supplier shall participate in Heavy Haul Rail's supply chain resilience testing as reasonably required by Heavy Haul Rail from time to time.

25. CYBER SECURITY

- 25.1. The Supplier shall:
- 25.1.1. maintain cyber security measures and controls consistent with ISO 27001 or equivalent internationally recognized standard;
- 25.1.2. conduct regular security assessments and penetration testing of its systems;
- 25.1.3. notify Heavy Haul Rail within 4 hours of becoming aware of any security incident, breach or vulnerability affecting or potentially affecting Heavy Haul Rail;
- 25.1.4. maintain separate network segregation for Heavy Haul Rail data and systems;
- 25.1.5. ensure all personnel with access to Heavy Haul Rail systems or data undergo appropriate security awareness training.
- 25.2. The Supplier shall permit Heavy Haul Rail to conduct security audits and assessments and shall remediate any identified vulnerabilities within timeframes agreed with Heavy Haul Rail.
- 25.3. The Supplier shall maintain cyber liability insurance of not less than £5 million per incident with a reputable insurer.

26. RAIL INDUSTRY COMPLIANCE

- 26.1. Where applicable to the Goods or Services, the Supplier shall comply with all applicable rail industry standards, codes, and requirements including:
- (a) Office of Rail and Road (ORR) requirements and guidance;
- (b) Rail Safety and Standards Board (RSSB) standards and guidance;
- (c) Railway Group Standards (RGS) and Railway Industry Standards (RIS) as applicable;
- (d) Network Rail standards where applicable to the Goods or Services;
- (e) Railway Industry Supplier Approval Scheme (RISAS) requirements where applicable.
- 26.2. The Supplier shall obtain and maintain all necessary rail industry certifications, approvals and accreditations required for the supply of the Goods and Services and shall provide evidence of the same to Heavy Haul Rail upon request.
- 26.3. The Supplier shall immediately notify Heavy Haul Rail of any safety incidents, near misses, dangerous occurrences or regulatory investigations relating to the Goods or Services or the Supplier's operations.
- 26.4. The Supplier shall participate in Heavy Haul Rail's safety management system and attend safety briefings, training and meetings as reasonably required by Heavy Haul Rail.

27. RECALL AND PRODUCT WITHDRAWAL

- 27.1. If any Goods are or may be defective, unsafe, non-compliant with Regulatory Requirements or otherwise unfit for purpose, the Supplier shall at Heavy Haul Rail's direction and at the Supplier's cost:
- (a) immediately cease supply of the affected Goods;
- (b) recall and replace all affected Goods whether or not delivered;
- (c) conduct root cause analysis and implement corrective and preventive actions;
- (d) bear all costs of recall, withdrawal, replacement and reinstatement including logistics costs, replacement costs and consequential losses suffered by Heavy Haul Rail.
- 27.2. The Supplier shall maintain product recall and product liability insurance of not less than £10 million per occurrence with a reputable insurer.
- 27.3. The Supplier shall notify Heavy Haul Rail within 4 hours of becoming aware of any safety issue, quality issue or potential recall situation relating to the Goods.

28. STEP-IN RIGHTS

- 28.1. If the Supplier fails to perform its obligations under the Contract or Heavy Haul Rail reasonably believes that the Supplier will fail to perform, Heavy Haul Rail may:
- (a) step in and perform the Services itself or engage a replacement supplier to do so;
- (b) access the Supplier's premises, systems, materials and other resources necessary to complete performance of the Contract;
- (c) require the Supplier's personnel to provide reasonable assistance with transition to Heavy Haul Rail or a replacement supplier;
- (d) recover from the Supplier all additional costs reasonably incurred by Heavy Haul Rail in exercising its step-in rights.
- 28.2. Exercise of step-in rights under this Condition 28 does not waive or limit Heavy Haul Rail's right to terminate the Contract or claim damages for breach.

29. CONTINUOUS IMPROVEMENT

- 29.1. The Supplier shall:
- 29.1.1. continuously seek opportunities to improve the quality, efficiency, cost-effectiveness and sustainability of the Goods and Services;
- 29.1.2. propose innovations, efficiency improvements and cost reduction initiatives to Heavy Haul Rail on a quarterly basis;
- 29.1.3. participate in joint improvement initiatives and value engineering exercises as reasonably requested by Heavy Haul Rail;

29.1.4. share efficiency gains and cost savings achieved through continuous improvement on a 50/50 basis with Heavy Haul Rail unless otherwise agreed in writing.

29.2. The Supplier shall benchmark its performance against relevant industry standards and best practices and shall provide annual benchmarking reports to Heavy Haul Rail upon request.

30. OPEN BOOK ACCOUNTING

30.1. For Contracts with an annual value exceeding £500,000 or with a duration exceeding 3 years, the Supplier shall operate on an open book basis, providing to Heavy Haul Rail:

30.1.1. detailed cost breakdowns for all Goods and Services showing labour, materials, overheads and profit margins;

30.1.2. evidence of third-party costs incurred and margins applied;

30.1.3. quarterly cost reports showing cost trends, variances and explanations for material changes.

30.2. Heavy Haul Rail may audit the cost information provided under this Condition 30 and may require price adjustments if profit margins exceed levels agreed in writing between the parties.

30.3. All cost information provided under this Condition 30 shall be treated as Confidential Information in accordance with Condition 10.