

**TERMS AND CONDITIONS OF SALE**  
**(the "Conditions")**

**General Information**

These Conditions govern the provision of the Goods and Services by FIS. For simplicity they have been split into 4 parts:

- Part A: General Terms and Conditions
- Part B: Waste Services
- Part C: Plant and Equipment Services
- Part D: Supply of Goods

**For the avoidance of doubt, the terms and conditions set out in Parts B, C and D shall apply in addition to the terms and conditions set out in Part A (including the limitations of liability) depending on which Goods and/or Services are provided by FIS to Customer.**

**PART A – GENERAL CONDITIONS**

**1 Definitions and Interpretation**

1.1 In these Conditions the following terms have the following meanings:

- "**Affiliates**" means FIS's parent undertakings and each of its subsidiary undertakings and each of its parent undertakings' subsidiary undertakings from time to time, "parent undertaking" and "subsidiary undertaking" having the meanings given to them in section 1162 of the Companies Act 2006;
- "**Contract**" means a contract created by FIS's acceptance of an Order and which incorporates these Conditions and any special conditions detailed in the Order;
- "**Customer**" means the customer detailed on the Order;
- "**FIS**" means Future Industrial Services Limited (company number 03734986) of Image Business Park, Acornfield Road, Kirkby, Liverpool L33 7UF;
- "**Goods**" means the goods detailed on the Order;
- "**Intellectual Property Rights**" means all rights in the nature of patents, designs, copyright, trade marks, rights in databases and utility models and all other rights of a similar nature (whether registered or unregistered and whether capable of registration or not) in the Goods and/or arising out of the performance of the Services;
- "**Law**" means any applicable statute, regulation, by-law, ordinance, codes of practice or subordinate legislation of any government or governmental authority or body in force from time to time and includes the common law and any applicable judgment of a relevant court of law which creates or changes a binding precedent;
- "**Order**" means an order for Goods and/or Services placed by Customer;
- "**Plant and Equipment Services**" the provision of equipment by FIS to Customer and other services relating to the hire of the equipment as specified on the Order (which may include but is not limited to the delivery and/or collection of the Equipment) in accordance with the terms and conditions set out in Part C of these Conditions;
- "**Services**" means the Waste Services, the Plant and Equipment Services, the Transportation Services or any other service provided by FIS to Customer as more particularly detailed on the Order; and
- "**Waste Services**" means the collection, transportation and/or disposal of waste, waste materials and/or any industrial activity on site at a disposal site on behalf of Customer as specified on the Order in accordance with the terms and conditions set out in Part B of these Conditions.

**2 Basis of contract**

- 2.1 These Conditions apply to all contracts for the sale of goods and/or services entered into by FIS or its Affiliates. Where Customer places an Order with an Affiliate, each reference to FIS shall be read as if it means the Affiliate and the Contract will be formed between the Affiliate and Customer.
- 2.2 By placing an Order Customer agrees to deal with FIS on these Conditions to the exclusion of all other terms, conditions, warranties or representations (unless given fraudulently or specified in the Contract) including, without limitation, any terms and conditions appearing on Customer's purchase order or implied by trade or a course of dealing.
- 2.3 Each Contract contains all the terms agreed by Customer and FIS in relation to its subject matter and supersedes all prior agreements, understandings and arrangements whether oral, in writing or arising from a course of dealing. Save in relation to fraudulent misrepresentation (in respect of which FIS's liability is not limited or excluded) Customer acknowledges and accepts that in placing an Order, it has not relied upon any statement, representation or promise except as set out in the Contract or these Conditions.
- 2.4 Unless otherwise specified in writing, quotations are valid for 30 days from the date of issue, after which date the quotation shall automatically be deemed to have been withdrawn.
- 2.5 All Orders are subject to acceptance at FIS's absolute discretion and are not binding upon FIS until accepted by it in writing or an "Order Acknowledgement" form has been issued.
- 2.6 If there is a conflict between these Conditions and a Contract, the terms of the Contract shall take precedence but only to the extent that a term is unambiguously and expressly stated to vary these Conditions.
- 2.7 FIS may alter these Conditions from time to time. Any change shall apply to all Orders placed after the date of the change. Customer is reminded of the need to check these Conditions for changes each time it places an Order.
- 2.8 FIS reserves the right to change the specification of the Goods and/or Services without notice to Customer, including (without limitation) to comply with safety, regulatory and other requirements.
- 2.9 Customer may not cancel or vary any Order which FIS has accepted orally or in writing without FIS's express written consent. FIS reserves the right to charge Customer reasonable cancellation charges (to compensate FIS for any loss or damage FIS may incur as a result of such cancellation) in the event of any such cancellation.
- 2.10 Customer shall be solely responsible for procuring any licences, consents or permissions required for the ownership, installation and/or operation of the Goods and/or the receipt of the Services prior to delivery of the Goods and/or Services. FIS shall not be obliged to deliver the Goods and/or Services to Customer where Customer fails to obtain such licences, consents and permissions and FIS shall not have any liability to Customer for any loss or damage of any kind whatsoever whether direct or indirect or consequential arising from any such non-delivery.

**3 Payment**

- 3.1 The price of the Goods or charges for the Services shall be calculated and invoiced in accordance with the relevant Part of these Conditions.
- 3.2 Invoices are payable in the currency detailed in the Contract in full and cleared funds without set off or deduction within 30 days of the date of invoice unless otherwise agreed in writing.
- 3.3 If Customer fails to pay the price of the Goods or charges for the Services in full when it is due, FIS shall be entitled to:
- 3.3.1 suspend delivery of Goods and/or performance of the Services; and/or
- 3.3.2 charge interest on the overdue amount at the rate of 4% above the official dealing rate of the Bank of England from time to time calculated on a daily basis from the due date until the date of payment; and
- 3.3.3 Customer shall indemnify and hold FIS harmless in respect of any loss, liability, damage, costs and expenses (including, without limitation, legal costs) suffered or incurred by FIS in recovering any unpaid and overdue sums.
- 3.4 If FIS grants Customer provisional credit in respect of any part of the Goods or Services, it shall be without prejudice to its rights to refuse to give up possession of any other part of the Goods and/or perform any other part of the Services except against payment.

**4 Intellectual Property**

- 4.1 All Intellectual Property Rights in the Goods and in or arising from the performance of any Services shall vest in FIS.
- 4.2 FIS is entitled to inform third parties that it provides, or has provided, the Goods and/or Services to Customer. For this sole purpose, Customer grants FIS a licence to use its corporate name and any logo.
- 4.3 Nothing in these Conditions will be construed as any representation or warranty by FIS that the design, manufacture, use or sale of the Goods or Services will not infringe any third party intellectual property rights.

**5 Liability**

- 5.1 Save as provided in clause 5.3, FIS's total aggregate liability to Customer in respect of each Contract (whether in contract, tort (including, but not limited to, negligence) or otherwise) shall not exceed the price/charges paid or payable by Customer under such Contract.
- 5.2 In no event shall FIS be liable for any claim to the extent that it relates to:
- 5.2.1 loss of profits, goodwill, business opportunity or anticipated savings;
- 5.2.2 injury to reputation;
- 5.2.3 third party losses; or
- 5.2.4 indirect, consequential or special loss or damage, regardless of the form of action, whether in contract, tort (including, but not limited to, negligence) or strict liability and regardless of whether FIS knew or had reason to know of the possibility of the loss or damage in question.
- 5.3 Nothing in these Conditions or a Contract will exclude or limit FIS's liability for:
- 5.3.1 death or personal injury caused by negligence;
- 5.3.2 fraud or fraudulent misrepresentation; or
- 5.3.3 any other loss or damage the exclusion or limitation of which is prohibited by English law.
- 5.4 All warranties, conditions, guarantees and representations that may be implied into these Conditions or a Contract by statute, common law or otherwise are hereby excluded to the fullest extent permitted by Law.
- 5.5 Customer shall indemnify and hold FIS and its Affiliates harmless in full against all liability, loss, damages, costs and expenses whether direct, indirect or consequential (including, without limitation, legal expenses) awarded against or incurred or paid by FIS as a result of Customer's breach of these Conditions or a Contract.

**6 Termination**

- 6.1 FIS shall be entitled to terminate a Contract if:

- 6.1.1 Customer makes an arrangement with or enters into a compromise with its creditors, becomes the subject of a voluntary arrangement, receivership, administration, liquidation or winding up, is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or otherwise becomes insolvent or suffers or is the subject of any restraint, execution, event of insolvency or event of bankruptcy or any similar process or event whether in the United Kingdom or otherwise;
- 6.1.2 Customer ceases or threatens to cease to carry on business; or
- 6.1.3 FIS reasonably apprehends that any of the events specified in clauses 6.1.1 and 6.1.2 is about to occur in relation to Customer and notifies Customer accordingly.
- 6.2 If FIS becomes aware following acceptance of an Order, of circumstances which bring the creditworthiness of Customer into doubt, or if the agreed payment terms are not observed, FIS is entitled, at its absolute discretion and without liability, to consider all outstanding claims against Customer as due for payment immediately or to require the lodging of the appropriate securities or to withdraw from the Contract.
- 6.3 If FIS is entitled to terminate a Contract all outstanding elements of the Price shall become immediately due and payable. The termination of a Contract shall be without prejudice to FIS's rights and obligations accrued at the date of termination.
- 6.4 Any clauses which implicitly have effect after termination or expiry of a Contract will continue to be enforceable notwithstanding termination or expiry.
- 7
- General**
- 7.1 FIS shall not be liable for failure or delay in performing its obligations under these Conditions or a Contract caused by a circumstance or event beyond its reasonable control including, without limit, strikes or industrial disputes (whether involving FIS's workforce or that of a third party), shortages of or inadequate sources of raw materials, component parts or essential utilities. In case of any shortages of raw materials or component parts FIS reserve the right to apportion Goods between customers on an equitable basis in FIS's sole discretion.
- 7.2 Customer shall be liable for the acts and/or omissions of its employees, agents, servants and/or sub-contractors as though they were its own acts and/or omissions under a Contract.
- 7.3 A party's failure to enforce or rely on or delay in enforcing or relying on any right that it may have under these Conditions will not prevent that party from later enforcing or relying upon that or any other right.
- 7.4 If a court or other regulatory body finds that any part of these Conditions is invalid or unenforceable, the remainder shall not be affected and shall be construed as if such invalid or unenforceable part did not exist.
- 7.5 Nothing in these Conditions shall confer any right upon any person who is not a party to it, whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise.
- 7.6 In these Conditions, the headings are included for convenience only; the singular includes the plural and vice versa; and references to persons include all legal persons.
- 7.7 Save as expressly provided in these Conditions, the provisions of the INCOTERMS 2000 shall not apply.
- 7.8 These Conditions and each Contract (and any associated non-contractual claims or disputes) shall be governed by and construed in accordance with English law and the parties irrevocably submit to the exclusive jurisdiction of the English courts.

## **PART B – WASTE SERVICES**

### **1 Definitions and Interpretation**

- 1.1 Save where inconsistent with context, terms which are defined in Part A of these Conditions shall have the same meaning in this Part B.
- 1.2 In the event of any conflict between any provisions in Part A of these Conditions and any provisions in Part B, the terms of Part B shall have precedence.
- 1.3 For the purposes of this Part B, the following terms shall also have the following meanings:
- "Additional Charges"**  
means any charges for the performance of Waste Services which is additional to those detailed in the Transfer Note or these Conditions and such charges shall reflect the additional costs incurred by FIS in performing the Waste Services;
- "Charges"**  
means the charges for the Waste Services and/or Transportation Services as calculated in accordance with clause 11 of this Part B;
- "Container"**  
means any container, drum, sack or other receptacle supplied by and/or serviced by FIS;
- "Consignment Note"**  
means a consignment note for the carriage and disposal of Hazardous Waste as required by and in accordance with the Hazardous Waste (England and Wales) Regulations 2005;
- "Disposal Site"**  
means the licensed site or sites (including landfill sites) at which Waste shall be lawfully treated, reprocessed, recycled, recovered or otherwise disposed of by FIS or its agents or sub-contractors (at FIS's sole discretion);
- "General Waste"**  
means dry, non-hazardous, non-notifiable commercial waste which is compactable or non-compactable (as is appropriate for the Container) excluding Hazardous Waste;
- "Hazardous Waste"**  
means hazardous waste as such term is defined in the Hazardous Waste (England and Wales) Regulations 2005 (as amended from time to time);
- "Materials"**  
the materials that FIS agrees to transport (which may include but is not limited to chemicals or Waste) and as are more particularly detailed in the Order;
- "Particulars"**  
with the details furnished or inserted on or attached to the Waste or Material specification form to be provided by Customer with each consignment of Waste or Materials;
- "Service Commencement Date"**  
means the commencement date for the Waste Services or Transportation Services, as applicable, specified in the Order;
- "Site"**  
means the premises at which the Waste Services or Transportation Services, as applicable, are provided as detailed in the Transfer Note;
- "Transfer Note"**  
means the duty of care waste transfer note detailing the type, character and quantities of Waste to be disposed of by FIS;
- "Transportation Services"**  
the transportation of Materials as specified in the Order; and
- "Waste"**  
means General Waste and Hazardous Waste (as may be appropriate) further particulars of which are set out in the current Transfer Note.

### **2 Orders and Quotations**

- 2.1 Unless otherwise specified in writing, quotations are valid for 30 days from the date of issue, after which date the quotation shall automatically be deemed to have been withdrawn. All quotations are subject to completion of an appropriate Transfer Note and FIS reserves the right to change any quotation as a result of any new information provided in the Transfer Note.
- 2.2 Each Order must be accompanied by a completed and accurate Transfer Note and is subject to acceptance at FIS's absolute discretion. Customer is solely responsible for ensuring that a Transfer Note is provided in accordance with the time scale specified by the relevant Law.
- 2.3 Customer may cancel or vary a Contract for the Waste Services and/or Transportation Services which FIS has accepted orally or in writing no less than twenty-four hours prior to the stipulated time for performance (as set out in the Order). FIS reserves the right to charge Customer reasonable cancellation charges (to compensate FIS for any loss or damage FIS may incur as a result of such cancellation) in the event of any such cancellation.

### **3 Provision of the Waste Services**

- 3.1 FIS will perform the Waste Services from the Service Commencement Date using reasonable care and skill.
- 3.2 Customer's only remedy in respect of a breach of clause 3.1 will be (at FIS's sole discretion) (a) re-performance of the affected Waste Service or (b) a refund of the proportion of the Charges relating to the affected Waste Service together with any other costs or expenses invoiced by FIS in respect of those Waste Services under clause 11.
- 3.3 FIS shall have absolute discretion in the performance of the Waste Services and may reject any Waste which it considers is difficult to collect or dispose of (whether by reason of size, content, weight or otherwise).
- 3.4 FIS may, at its discretion, require Customer to provide for analysis an acceptance sample or samples of any Waste placed or proposed to be placed in its Containers prior to collection and/or disposal of that Waste.
- 3.5 If FIS considers that the Waste is different from that described in the Transfer Note, identified to FIS or sampled by FIS, then FIS may either:
- 3.5.1 require Customer to amend the description of the Waste on the Transfer Note (subject to compliance with all relevant Laws), in which case, FIS may issue a revised quotation;
- 3.5.2 accept the Waste for disposal upon special conditions (including without limitation the imposition of an Additional Charge) which FIS shall notify to Customer. If the Customer fails to serve a counter notice within 14 days of the date of the additional conditions (including without limitation any revised Charges), FIS shall proceed to treat the Waste. If Customer does not accept any revised terms, Customer must remove the Waste from FIS's Site at its own expense and in a manner which accords with all relevant Laws. FIS may also require Customer to provide a further sample of any further Waste that is awaiting processing to satisfy itself as to the Waste's conformity prior to acceptance and treatment of the same; or
- 3.5.3 without liability to Customer refuse to collect or dispose of the Waste and, where applicable, require Customer to remove the Waste from FIS's Site at its own expense and in a manner which accords with all relevant Laws.

- 3.6 FIS shall be under no liability to provide the Waste Services in respect of any Waste which is not acceptable under the terms of the environmental permit for the relevant Disposal Site.
- 3.7 FIS shall be entitled at any time to inspect any Waste delivered by Customer to any FIS owned or managed Site and to reject such Waste or any part of it. No such inspection shall be deemed to be an acceptance of the Waste by FIS nor confirmation that the Waste accords with the Transfer Note.
- 3.8 For the avoidance of doubt, the exercise by FIS of any of its rights (including but not limited to the right to reject the Waste) under clauses 3.3 to 3.7 shall not affect or reduce the liability of the Customer to FIS under these Conditions.
- 3.9 FIS shall comply with all relevant Laws applicable to FIS's obligations and/or rights in respect of the performance of the Waste Services.
- 4 Provision of Transportation Services**
- 4.1 FIS will perform the Transportation Services from the Service Commencement Date using reasonable care and skill.
- 4.2 Customer's only remedy in respect of a breach of clause 4.1 will be (at FIS's sole discretion) (i) re-performance of the affected Transportation Service or (ii) a refund of the proportion of the Charges relating to the affected Transportation Service together with any other costs or expenses invoiced by FIS in respect of those Transportation Services under clause 11.
- 4.3 Prior to performing the Transportation Services, Customer must provide FIS with full and accurate details about the type of Materials to be transported so as to allow FIS to determine that the structure of the tanker it proposes to use to transport the Materials shall not be damaged (for example, but not limited to, as a result of a reaction between the Materials being transported and the chemical composition of the tanker or a reaction between the Materials themselves).
- 4.4 Customer shall ensure that prior to collection of the Materials:
- 4.4.1 the Materials are readily available for collection at the relevant time and on the proposed date for performance of the Transportation Services;
- 4.4.2 the Materials are stored in appropriate UN certified containers;
- 4.4.3 FIS is informed of any hazard and/or potential hazard on the Customer Site which may affect FIS, its personnel or contractors in the performance of the Transportation Services; and
- 4.4.4 the FIS vehicle is able to access the Materials to facilitate such collection.
- For the avoidance of doubt, FIS shall be under no obligation to perform the Transportation Services where Customer has failed to comply with clause 4.3 and/or this clause 4.4.
- 4.5 If the Materials are different from that described in Particulars, identified to FIS or sampled by FIS, then FIS may either:
- 4.5.1 require Customer to amend the description of the Materials in the Particulars (subject to compliance with all relevant Laws), in which case, FIS may issue a revised quotation;
- 4.5.2 accept the Materials for disposal upon special conditions (including without limitation the imposition of an Additional Charge) which FIS shall notify to Customer. If the Customer fails to serve a counter notice within 14 days of the date of the additional conditions (including without limitation any revised Charges), FIS shall proceed to provide the Transportation Services. If Customer does not accept any revised terms, Customer must remove the Materials from FIS's Site at its own expense and in a manner which accords with all relevant Laws. FIS may also require Customer to provide a further sample of any further Materials which is awaiting processing to satisfy itself as to the Material's conformity prior to acceptance and treatment of the same; or
- 4.5.3 without liability to Customer refuse to collect or dispose of the Materials and, where applicable, require Customer to remove the Materials from FIS's Site at its own expense and in a manner which accords with all relevant Laws.
- 4.6 FIS shall be entitled at any time to inspect any Materials delivered by Customer to any FIS owned or managed Site and to reject such Materials or any part of them. No such inspection shall be deemed to be an acceptance of the Materials by FIS nor confirmation that the Materials accord with the Particulars.
- 4.7 For the avoidance of doubt, the exercise by FIS of any of its rights (including but not limited to the right to reject the materials) under clauses 4.5 and 4.6 shall not affect or reduce the liability of the Customer to FIS under these Conditions.
- 4.8 FIS shall comply with all relevant Laws that touches or concerns FIS's obligations and/or rights in respect of the performance the Transportation Services.
- 5 Time of performance**
- 5.1 Unless otherwise agreed or stipulated by FIS, delivery of the Waste Services shall be at FIS's Site. Delivery of the Transportation Services shall be to and from the Sites specified in the Order.
- 5.2 FIS shall use its reasonable efforts to perform the Waste Services and the Transportation Services at the agreed time for delivery or collection (as specified in the Order or otherwise agreed by the parties).
- 5.3 The date and time of delivery or performance of the Waste Services or Transportation Services shall not be of the essence. FIS shall not have any liability to Customer for any loss or damage of any kind whatsoever whether direct or indirect or consequential caused directly or indirectly by any delay in delivery or collection of the Waste or Materials.
- 5.4 If FIS agrees to collect from or deliver Waste to a Customer Site, Customer shall ensure that:
- 5.4.1 each Container is readily available for collection at the relevant time and on the proposed date for performance of the Waste Services;
- 5.4.2 FIS is informed of any hazard on the Customer Site which may affect FIS, its personnel or contractors in the performance of the Waste Services; and
- 5.4.3 the FIS vehicle is able to access the Containers to facilitate such collection.
- For the avoidance of doubt, FIS shall be under no obligation to perform the Waste Services where Customer has failed to comply with this clause 5.4.
- 5.5 Where FIS is unable to provide the Waste Services or Transportation Services as a result of any delay or impediment caused by Customer, FIS reserves the right to charge, and Customer shall pay any Additional Charges associated with such delay or impediment (including but not limited to return visit to a Site which may be required as a result of the same).
- 5.6 FIS do not undertake to deliver or collect any Waste or Materials over roads or grounds which FIS considers to be unsuitable. If the driver of the FIS vehicle reasonably believes that in entering any Customer Site he is likely to cause damage to the property (whether belonging to Customer or not) or vehicle or that the Customer Site (or any part of it) or turning facilities are unsafe he may, without incurring any liability on behalf of FIS, refuse to enter the Customer Site or collect the Waste or Materials and FIS shall promptly notify Customer of the extent of its inability to carry out the Waste Services or Transportation Services, as applicable arising from such circumstances.
- 5.7 For deliveries or collections from a place situated off a public road or where Customer undertakes the unloading at a place of delivery, Customer shall indemnify and hold FIS and its Affiliates harmless in full against all liability, loss, damages, costs and expenses whether direct, indirect or consequential (including, without limitation, legal expenses) awarded against or incurred or paid by FIS as a result of damage to a vehicle, FIS equipment, the property of Customer or a third party (including, without limitation, the road margin and pavement) or any other liability arising from such activities.
- 5.8 Unless otherwise agreed in writing, Customer acknowledges that the quantity of Waste or Materials specified by any weighbridge used by FIS shall be conclusively proof of the weight of the Waste or Materials delivered (or, as the case may be, collected).
- 5.9 FIS shall, at its sole and absolute discretion be entitled to refuse access to any FIS owned or managed Site or part thereof and/or to close any Site for any period of time (without liability to Customer). It is Customer's responsibility on delivery to satisfy itself as to the suitability of the access roads to the waste discharge area and facilities for turning the vehicle around) for which FIS gives no warranty of suitability and accepts no liability for any damage caused to Customer's (or a third party's property). FIS reserves the right to charge Customer Additional Charges in relation to any costs incurred by FIS on removing a Customer vehicle from an FIS owned or managed Site.
- 6 Customer's obligations**
- Customer warrants that it shall:
- 6.1 ensure that no material change in the nature of the Waste or Materials shall take place prior to performance of the Waste Services or Transportation Services;
- 6.2 at all times be the producer of the Waste or Materials;
- 6.3 at all times comply with the requirements of all relevant Laws that are applicable to Customer's obligations and/or rights in respect of receipt of the Waste Services or Transportation Services (including without limitation relating to the identification, characterisation and transfer of all Waste and Materials or affecting health, safety and welfare of the general public and persons using or employed at the FIS Site);
- 6.4 ensure that each consignment of Waste or Materials conforms in all material respects with the Particulars;
- 6.5 ensure that all Waste and Materials will be contained in suitable containers (irrespective of whether or not FIS has previously supplied a Container to Customer) and correctly labelled and palletted (in the case of drums) so that no hazard will arise therefrom;
- 6.6 comply with the reasonable operational requirements of FIS notified to Customer from time to time;
- 6.7 provide FIS access to, at all reasonable times, and to use free of charge such of Customer's personnel, premises, facilities and assistance at the Customer Site as FIS may reasonably require to enable FIS to provide the Waste Services or Transportation Services safely;
- 6.8 ensure that FIS is promptly notified of all reasonable rules and requirements of the Site relating to health and safety prior to the performance of the Waste Services or Transportation Services;
- 6.9 be responsible for the safety of any person (including the employees and agents of FIS whilst on Customer's Site and ensure that all persons acting for or on behalf of FIS entering the Customer Site shall be safe for the purposes of the visit (provided always that FIS's personnel or contractors shall at all times act with reasonable skill and care and in accordance with Customer's reasonable rules and requirements in respect of health and safety notified to Company from time to time);
- 6.10 if the provision of the Waste Services or Transportation Services involves the movement of a vehicle along any road or in any area which is not a public highway, Customer shall ensure safe and adequate access and space in which loading and unloading operations, delivery and collection may be carried out without risk of damage to the vehicle, its driver or its load and without obstruction to the public highway;
- 6.11 not, at any time, request that FIS's personnel or sub-contractors undertake any Waste Service or Transportation Services outside the terms of the Contract without FIS's prior written agreement;

- 6.12 ensure that its employees, subcontractors and agents engaged in the delivery of Waste to the waste management facility owned or managed by FIS (i.e. an FIS Site) are:  
6.12.1 suitably trained, clothed and authorised;  
6.12.2 fully aware of relevant legislation and guidelines prior to using FIS facilities;  
6.12.3 whilst on FIS's Site comply with all instructions given by FIS and its employees and agents and comply with the FIS "Conditions of Site Use" (which shall be available on request); and
- 6.13 ensure that any vehicle, equipment or container (irrespective of whether or not FIS has previously supplied a Container to Customer) used to transport, store or handle Waste or Materials is in safe and good working order and in accordance with relevant Laws. Unless otherwise agreed by the parties all risks involved with such conveyance whether on an FIS Site or elsewhere shall be borne by Customer.

#### **7 Hazardous Waste**

- 7.1 Unless expressly agreed in writing FIS shall not accept and/or collect toxic, dangerous or Hazardous Waste.  
7.2 If FIS agrees to accept and/or collect toxic, dangerous or Hazardous Waste the Customer must ensure that:  
7.2.1 it has completed a complete and accurate Consignment Note for its carriage and disposal; and  
7.2.2 such toxic, dangerous or Hazardous Waste is in complete accordance with the description contained in the Consignment Note.
- 7.3 Unless otherwise expressly agreed in writing, Customer shall be responsible for loading the Hazardous Waste into the Containers. FIS may from time to time give and Customer shall comply with any instructions provided by FIS in relation to the loading of particular Hazardous Waste.
- 7.4 Where FIS does not supply Customer with Containers, Customer shall ensure that any waste container used for the collection and disposal of Hazardous Waste is:  
7.4.1 suitable for the material contained within;  
7.4.2 is in a sound road worthy condition; and  
7.4.3 where appropriate is UN certified in accordance with the Carriage of Dangerous Goods and Use of Transportable Pressure Equipments 2009 Regulations (as amended or replaced from time to time).
- 7.5 Customer shall ensure that any mixtures of Waste and/or Hazardous Waste placed in the Containers shall be safe, stable and non-reactive and are in accordance with the inventory and waste categorisations provided by Customer.
- 7.6 Unless expressly agreed in writing by FIS, any Waste collected or processed by FIS must not include any waste detailed in List I of the Annex to the Dangerous Substances Directive (76/464/EEC) (as repealed and replaced by Directive 2006/11/EC).

#### **8 Non-conforming Waste**

- 8.1 Customer warrants that in relation to the Waste:  
8.1.1 it has complied with all relevant Law which touches or concerns its rights/or obligations under these Conditions including but not limited to sections 33 and 34 of the Environmental Protection Act 1990 and the Environmental Protection (Duty of Care) Regulations 1991;  
8.1.2 it has the right to place the Waste in the Containers; and  
8.1.3 the identification of the Waste is by reference to the List of Wastes as it is from time to time set out in the European Waste Catalogue as set out in Decision 2000/532/EC, and other details set out in the Transfer Note are and will be true, complete and accurate in all respects.
- 8.2 Customer shall notify FIS immediately on becoming aware that any description or identification of the Waste is false, inaccurate or incomplete.

#### **9 Containers**

- 9.1 FIS shall deliver the Containers to the Customer Site in the quantity specified in the Order and/or the Transfer Note (as applicable).  
9.2 Customer is responsible for filling the Containers and shall only place Waste of the type, character and quantities described in the Transfer Note in the Containers. Customer will comply with all relevant Laws that touch or concern its obligations and/or rights under these Conditions.
- 9.3 Customer shall:  
9.3.1 not move the Containers from the Site to which it is delivered without the prior written consent of FIS;  
9.3.2 not place the Containers on a highway (whether public or private) or public place without FIS's prior agreement. Such agreement shall only be provided where Customer has obtained all necessary permissions required from the relevant third party or authority;  
9.3.3 ensure all Containers are loaded safely, evenly and not overfilled;  
9.3.4 in respect of any Waste liquids, not place the liquids into a Container only suitable for solid Waste. Customer shall ensure that it uses a Container which is appropriate for containing liquids and that such liquids comprise only pumpable liquids and free flowing sludge;  
9.3.5 ensure no sharp or hot materials are placed in any plastic Containers or other types of Containers likely to be damaged from placing such objects in them;  
9.3.6 not and, ensure that no other person shall, set fire to the contents of, or burn rubbish in any Containers;  
9.3.7 not damage, alter, interfere or fix anything to the Containers including but not limited to by removing FIS's own signage, lettering, insignia, advertising or other devices, or affixing its own to them; and  
9.3.8 at all reasonable times, FIS or its authorised representative is permitted access to the Containers to inspect, test, adjust, repair or replace the same. FIS shall take reasonable steps to carry out such inspections at mutually convenient times.
- 9.4 If a Container is incorrectly filled and/or loaded and FIS has incurred costs in cleaning the Container or treating or disposing of undeclared Wastes FIS shall be entitled to recover and Customer shall pay any Additional Charges.
- 9.5 Risk of any loss or damage (excluding fair wear and tear) to the Containers shall pass to and remain with Customer from the delivery of the Containers to the Customer Site.
- 9.6 The Containers shall remain the property of FIS and Customer shall have no rights to it other than those set out in these Conditions.
- 9.7 On termination of these Conditions for any reason, FIS shall be entitled to enter the Site to remove the Containers at any time and on reasonable notice to Customer.

#### **10 Property and Risk**

- 10.1 Subject always to the Customer being the producer of the Waste, property and risk in the Waste shall pass from Customer to FIS at the time of acceptance at FIS's Site in accordance with the Transfer Note provided that: (a) the Waste's description composition, packaging and labelling comply and/or accord with these Conditions and the Transfer Note; and (b) the Customer has not otherwise breached these Conditions. In all other circumstances, the risk shall remain with Customer who shall be liable for any damage caused by the Waste including without limitation by virtue of it not complying with these Conditions and the Transfer Note.
- 10.2 Subject always to the Customer being the producer of the Waste, property and risk in the Materials shall pass from Customer to FIS at the time of collection provided that the Materials comply with the description in the Order and the Customer has not otherwise breached these Conditions. In all other circumstances, the risk shall remain with Customer who shall be liable for any damage caused by the Materials which do not comply and/or accord with these Conditions.

#### **11 Charges and Additional Charges**

- 11.1 The Charges for the Waste Services and/or Transportation Services shall be as set out in the Contract or, if not specified, the charges set out in the quotation, or if no charges are stated or the quote is no longer valid, the charges specified in FIS's current price list at the date of performance of the relevant Service.
- 11.2 The Charges (and any Additional Charges) are exclusive of any VAT or other taxes, duties or governmental charges imposed (including but not limited to as a result of the Waste being incorrectly described in the Transfer Note or as a result of any assessment by HM Revenue and Customers). Such VAT, taxes, duties or government charges shall be payable by Customer in addition to the Charges (or any Additional Charges).
- 11.3 FIS reserves the right to charge the Customer for a minimum quantity of Waste for each individual load of Waste serviced (notwithstanding that less than the minimum quantity has been serviced) or, if applicable, a minimum quantity of Material for each load transported.
- 11.4 Where FIS imposes Additional Charges in accordance with this Part B, FIS shall notify Customer in writing of such Charges and, on reasonable request, provide Customer with evidence of how such Additional Charges have been calculated.
- 11.5 FIS shall be entitled to vary the Charges on 7 days' written notice without the Customer's consent (or, where FIS is given a shorter notice of any relevant change as detailed below, as much notice as is reasonably practicable) by such amount as is reasonable to compensate FIS for any increase in the cost of performing the Waste Services or Transportation Services or its other obligations under this Part B caused by any of the following:  
11.5.1 an increase in fuel costs (including vehicle fuel duty);  
11.5.2 an increase in disposal cost (including landfill tax);  
11.5.3 material changes in the quantity of Waste or Materials or value of each consignment;  
11.5.4 material changes in the distance travelled to perform the Waste Services or Transportation Services arising from Customer's actions;  
11.5.5 increase in costs due to any change in any relevant Laws or increase in cost to FIS of complying with existing relevant Laws (including any taxes, duties, fees and other relevant government charges which FIS is obliged to pay in respect of the performance of the Waste Services or Transportation Services); and  
11.5.6 other extraordinary increases in cost.

#### **12 Termination**

- 12.1 FIS shall be entitled to terminate a Contract forthwith by notice in writing to Customer:  
12.1.1 if Customer commits an irremediable breach of these Conditions, persistently repeats a remediable breach or commits any remediable breach and fails to remedy it within 14 days of receipt of the notice of the breach requiring remedy of the same; or  
12.1.2 fails to pay any invoice when due and does not remedy that failure within 14 days of receiving written notice of the overdue payment.
- 12.2 If FIS is entitled to terminate a Contract all outstanding elements of the Charges (or Additional Charges) shall become immediately due and payable. The termination of a Contract shall be without prejudice to FIS's rights and obligations accrued at the date of termination.
- 12.3 Any clauses which implicitly have effect after termination or expiry of a Contract will continue to be enforceable notwithstanding termination or expiry.

- 13 **Suspension of Waste Service and Transportation Service**  
13.1 FIS may suspend the performance of the Waste Services or Transportation Services and/or remove any Containers from the Site if:  
13.1.1 FIS, acting reasonably and at its sole discretion, deems that arrangement for payment of Customer's account are not satisfactory; or  
13.1.2 if full payment is not received by FIS by the due date;  
13.1.3 the Customer's account is over the credit limit determined by FIS; or  
13.1.4 where FIS, acting reasonably, considers that the Waste Service required may place at risk any person, goods, vehicle, equipment or property.
- 14 **Indemnity by Customer**  
14.1 Customer shall indemnify and hold FIS and its Affiliates harmless in full against all liability, loss, damages, costs and expenses whether direct, indirect or consequential (including, without limitation, legal expenses) awarded against or sustained or incurred or paid by FIS as a result of Customer's act or omission save where directly caused by FIS' negligence.  
14.2 For the duration of time that a person providing the Waste Services or Transportation Services (for example a driver of a collection vehicle), is on or adjacent to Customer's Site, that person shall be deemed under the control of Customer.  
14.3 Customer shall be solely liable for any accident or damage caused on, above or below the surface of Customer's Site (or the adjacent land) by:  
14.3.1 the weight of the vehicle or its load; or  
14.3.2 any movement of the vehicle or its load to any bridges, wires, cables, drains and other services, manholes, roads, paths or any surface or any other property,  
and Customer shall indemnify and hold FIS and its Affiliates harmless in full against all liability, loss, damages, costs and expenses whether direct, indirect or consequential (including, without limitation, legal expenses) awarded against or sustained or incurred or paid by FIS in respect of clauses 14.3.1 and 14.3.2.
- 15 **Insurance**  
Customer undertakes and agrees to obtain and maintain adequate public liability insurance to meet all claims and liabilities that may arise as a consequence of entering into a Contract with FIS, and shall provide evidence of the same upon request.
- 16 **Liability**  
16.1 Save as provided in clause 16.3, FIS's total aggregate liability to Customer in respect of each Contract (whether in contract, tort (including, but not limited to, negligence) or otherwise) shall not exceed the total Charges (including any Additional Charges) paid or payable by Customer under such Contract.  
16.2 FIS shall not be liable for any claim to the extent that it relates to:  
16.2.1 loss of profits, goodwill, business opportunity or anticipated savings;  
16.2.2 injury to reputation;  
16.2.3 third party losses;  
16.2.4 any loss arising during the conveyance of Waste by Customer (including damage to Customer vehicles on a FIS Site); or  
16.2.5 indirect, consequential or special loss or damage, regardless of the form of action, whether in contract, tort (including, but not limited to, negligence) or strict liability and regardless of whether FIS knew or had reason to know of the possibility of the loss or damage in question.  
16.3 Nothing in this Part B of the Conditions or a Contract will exclude or limit FIS's liability for:  
16.3.1 death or personal injury caused by negligence;  
16.3.2 fraud or fraudulent misrepresentation; or  
16.3.3 any other loss or damage the exclusion or limitation of which is prohibited by English law.  
16.4 All warranties, conditions, guarantees and representations that may be implied into this Part B of the Conditions or a Contract by statute, common law or otherwise are hereby excluded to the fullest extent permitted by Law.

## **PART C – PLANT AND EQUIPMENT**

- 1 **Definitions and Interpretation**  
1.1 Save where inconsistent with context, terms which are defined in Part A of these Conditions shall have the same meaning in this Part C.  
1.2 In the event of any conflict between any provisions in Part A of these Conditions and any provisions in Part C, the terms of Part C shall have precedence.  
1.3 For the purposes of this Part C, the following terms shall also have the following meanings:  
"Charges" means FIS's current hire charges from time to time including any charges for the Services during the Hire Period or supply of Services (as appropriate);  
"CPA Terms" means the Construction Plant-Hire Association Model conditions for the Hiring of Plant (with effect from July 2011) as may be amended from time to time, a copy of which is available on request;  
"Deposit" means any advance payment required by us in relation to cash hires for the Equipment which is to be held as security by us;  
"Equipment" means the equipment detailed in the Order together as a whole and any accessories hired by Customer as specified in the Contract;  
"Hire Period" means the period commencing on the date that the Equipment comes into the Customer's possession and ending upon the happening of any of the following events (a) Customer returns the Equipment to FIS' possession; or (b) FIS repossess or collect the Equipment.
- 2 **Basis of Contract**  
2.1 In addition to Part A and this Part C of the Conditions, each hire of Equipment to Customer by FIS shall be on and subject to the CPA Terms. To the extent there is a conflict between these Conditions and the CPA Terms, the terms of these Conditions shall have precedence.  
2.2 All other terms, conditions, warranties or representations (unless given fraudulently or specified in the Contract) including, without limitation, any terms and conditions appearing on Customer's purchase order or implied by trade or a course of dealing are expressly excluded.  
2.3 FIS's employees or agents are not authorised to make any representations concerning the Equipment unless confirmed in writing and any advice or recommendation given by FIS to Customer as to the storage, application or use of the Equipment which is not confirmed in writing is followed or acted upon entirely at Customer's own risk.  
2.4 FIS reserves the right to provide Equipment similar or comparable to that ordered by Customer.  
2.5 The Equipment is hired subject to it being available for hire at the time Customer requests it. FIS will not be liable for any loss suffered by Customer as a result of the Equipment being unavailable for hire.  
2.6 Customer shall obtain and comply with all permissions, consents and licences required for the Equipment under any relevant Laws.  
2.7 Customer shall operate the Equipment in accordance with the instructions and Customer shall take all reasonable steps to keep the Equipment safe and secure and to prevent accidental damage to the Equipment.
- 3 **Charges**  
3.1 The amount of any Deposit and Charges are detailed in the Order and are based on FIS's current price list from time to time.  
3.2 Where a Deposit is required for the Equipment it must be paid before the Equipment is delivered and/or the Customer takes possession of the Equipment.  
3.3 Customer shall pay the Charges from the date specified in the Order and will continue paying the Charges during the Hire Period until (a) FIS have given Customer a collection or off-hire number; and (b) Customer has returned the Equipment to FIS or FIS has collected the Equipment within a reasonable period after the issue of the off-hire number, being not more than 3 working days, and the Equipment is in a clean and serviceable condition and FIS has given Customer a receipt. All time during the Hire Period is chargeable and the Charges shall be payable on Saturdays, Sundays and Bank Holidays (as appropriate).  
3.4 If FIS is unable to collect the Equipment for any reason (other than its own act or omission) after an offhire number has been issued, FIS will provide an amendment form to be signed by Customer to extend the Contract and the Charges shall continue to be payable in accordance with the Contract. Any signature provided by Customer's employees, agents, or representatives shall be deemed to be an authorised signature for and on Customer's behalf for the purpose of the Contract.  
3.5 Where a credit account has not been granted, payment of the Charges shall be made with Customer's order for the Equipment. Otherwise, payment of any Charges or any other sums due under the Contract shall be made in full and cleared funds without set off or deduction within 30 days of the date of invoice unless otherwise agreed in writing.  
3.6 All Charges are, unless otherwise stated, exclusive of any applicable VAT.  
3.7 FIS may set a reasonable credit limit for Customer. FIS reserves the right to terminate or suspend the Contract for hire of the Equipment and/or the provision of Plant and Equipment Services if allowing it to continue would result in Customer exceeding its credit limit or Customer has already exceeded the credit limit.
- 4 **Risk, Title and Ownership**  
4.1 Risk in the Equipment will pass to Customer immediately when the Equipment leaves FIS's physical possession or control.  
4.2 Risk in the Equipment will not pass back to FIS from Customer until the Equipment is returned to FIS's physical possession.  
4.3 Ownership of the Equipment remains with FIS at all times. Customer has no right, title or interest in the Equipment except that it is hired to Customer.
- 5 **Delivery, Collection and Services**  
5.1 Customer shall collect the Equipment from FIS and return it to FIS at the end of the Hire Period. If FIS agrees to deliver or collect the Equipment to and/or from Customer, FIS will charge its standard delivery cost from time to time.

- 5.2 Where FIS provides Plant and Equipment Services in addition to the hire of Equipment Customer shall be responsible for the safety and well being of the persons performing the Plant and Equipment Services while on the Customer's premises. Customer shall be solely responsible for any damage which occurs as a result of such persons following Customer's instructions during the Hire Period, except to the extent that the persons performing the Plant and Equipment Services are negligent.
- 5.3 Customer will allow and/or procure sufficient access to and from the relevant site and procure sufficient loading space, facilities, equipment and access to power supplies and utilities for FIS's employees, sub-contractors and/or agents to allow them to carry out the Plant and Equipment Services. Customer will ensure that the site where the Plant and Equipment Services are to be performed is cleared and prepared before the Plant and Equipment Services are due to commence.
- 5.4 Customer shall pay for any lifting or special apparatus required for the citing of the Equipment.
- 5.5 If any Plant and Equipment Services are delayed, postponed and/or cancelled due to Customer's failure to comply with its obligations under the Contract, Customer will be liable to pay additional standard charges from time to time for such delay, postponement and/or cancellation except where the delay is due to a circumstance or event beyond its reasonable control as described in clause 7.1 of Part A.

## **Care of Equipment**

- 6.1 Customer shall:
- 6.1.1 not deface or remove any labels from and/or interfere with the Equipment, their working mechanisms or any other parts of them;
- 6.1.2 take reasonable care of the Equipment and keep them properly maintained and only use them for their proper purpose in a safe and correct manner in accordance with any operating and/or safety instructions provided to or supplied to Customer and any relevant Laws;
- 6.1.3 notify FIS immediately and in any event within 24 hours after any breakdown, loss and/or damage to the Equipment or of any accident resulting in death, personal injury or damage to property;
- 6.1.4 take adequate and proper measures to protect the Equipment from theft, damage and/or other risks;
- 6.1.5 permit FIS at all reasonable times to inspect the Equipment including procuring access to any property where the Equipment is situated;
- 6.1.6 keep the Equipment at all times in Customer's possession and not remove the Equipment from Customer's premises without FIS's prior written consent;
- 6.1.7 be responsible for the conduct and cost of any testing, examinations and/or checks in relation to the Equipment required by relevant Laws, except to the extent that FIS has agreed to provide them as part of any Plant and Equipment Services;
- 6.1.8 not do or omit to do anything which will or may be deemed to invalidate any policy of insurance related to the Equipment;
- 6.1.9 not continue to use Equipment where it has been damaged; and
- 6.1.10 ensure that, where appropriate, the Equipment is properly installed by a qualified and competent person.
- 6.2 Customer must return the Equipment in good working order and condition (fair wear and tear excepted) in a clean condition together with all licences, registration and other documents relating to the Equipment.
- 6.3 Customer is responsible for checking the calibration of the Equipment on each occasion before use. Customer is solely responsible for finally determining the suitability of the Equipment for a specific use and Customer assumes all risk and liability in this regard.

## **Termination**

- 7.1 If the Hire Period has a fixed duration, subject to the remainder of this clause 7, neither party shall be entitled to terminate the Contract before the expiry of that fixed period unless by agreement.
- 7.2 If the Hire Period does not have a fixed duration either party may terminate the Contract upon giving to the other party any agreed period of notice.
- 7.3 FIS shall be entitled to terminate the Contract forthwith by notice in writing to Customer:
- 7.3.1 if Customer commits an irremediable breach of the Contract, persistently repeats a remediable breach or commits any remediable breach and fails to remedy it within 14 days of receipt of the notice of the breach requiring remedy of the same; or
- 7.3.2 if Customer provides incomplete, materially inaccurate or misleading facts and/or information in connection with the Contract;
- 7.3.3 if Customer attempts to pledge, charge or create any form of security over any Equipment; or
- 7.3.4 for non-payment in accordance with the CPA Terms; or
- 7.3.5 in FIS's reasonable opinion due to Customer's credit rating, Customer appears to be financially inadequate to meet its obligations under the Contract.
- 7.4 If any of the events set out in clause 7.3 of this Part C above occurs in relation to Customer then:
- 7.4.1 FIS may enter, without prior notice, any of Customer's premises (or premises of third parties with their consent) where the Equipment may be and repossess any Equipment;
- 7.4.2 FIS may withhold the performance of any Plant and Equipment Services and cease any Plant and Equipment Services in progress under this and/or any other contract between Customer and FIS (or any of its Affiliates); and
- 7.4.3 any unpaid invoices rendered by FIS in respect of the hire of the Equipment or provision of the Plant and Equipment Services shall become immediately due and payable.
- 7.5 FIS also reserves the right to suspend the Contract if it has a right to terminate the Contract under this clause 7.
- 7.6 Any repossession of the Equipment shall not affect FIS's right to recover from Customer any monies due under the Contract or any other contract between Customer and FIS (or any of its Affiliates) and/or any damages in respect of any breach which occurred prior to repossession of the Equipment.
- 7.7 Upon termination of the Contract Customer shall immediately:
- 7.7.1 at its own expense and as required by FIS, return the Equipment to FIS or make the Equipment available for FIS to collect; and
- 7.7.2 pay to FIS (or any of its Affiliates), in full and cleared funds, all outstanding Charges and/or any other sums payable under the Contract or any other contract between FIS (or any of its Affiliates) and Customer.
- 7.8 The termination of a Contract (howsoever arising) will be without prejudice to any rights and remedies which may have accrued to either party.
- 7.9 Any clauses which implicitly have effect after termination or expiry of a Contract will continue to be enforceable notwithstanding termination or expiry.

## **General**

- 8.1 The hiring of each piece of Equipment in the relevant Hire Period shall form a distinct Contract which shall be separate to any other Contract relating to other Equipment.
- 8.2 Customer shall be responsible for compliance with all relevant Laws, including (but not limited to) regulations under the Factories Act 1961, Health and Safety at Work etc. Act 1974 that touches or concerns Customer's obligations and/or rights under these Conditions.
- 8.3 Customer shall indemnify and hold FIS and its Affiliates harmless in full against all liability, loss, damages, costs and expenses whether direct, indirect or consequential (including, without limitation, legal expenses) awarded against or incurred or paid by us as arising from or due to Customer's breach of contract, tort (including negligence) and/or any breach of statutory duty and/or any claim from a third party for injury to person or property arising from Customer's use or storage of the Equipment.

## **PART D – SUPPLY OF GOODS**

### **Definitions and Interpretation**

- 1.1 Save where inconsistent with context, terms which are defined in Part A of these Conditions shall have the same meaning in this Part D.
- 1.2 In the event of any conflict between any provisions in Part A of these Conditions and any provisions in Part D, the terms of Part D shall have precedence.
- 1.3 For the purposes of this Part D, the following terms shall also have the following meanings:
- "**Delivery Address**" means the address for delivery of the Goods which shall be FIS's principal place of business unless otherwise specified in the Order;
- "**Estimated Delivery Date**" means the anticipated delivery date detailed on the Order;
- "**Price**" the price detailed on the Order or, if no price is detailed on the Order, the price quoted by FIS; and
- "**Specification**" means the description of the Goods provided by FIS from time to time.

### **Goods**

- 2.1 Unless otherwise agreed in writing between FIS and Customer, the quantity and description of the Goods shall be as set out in the Order.
- 2.2 All samples, drawings, descriptive matter, specifications and advertising issued by FIS and any descriptions or illustrations contained in FIS's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods described in them and they shall not form part of the Contract.
- 2.3 Where FIS provides a sample of the Goods to Customer it is for the sole purpose of enabling Customer to judge the quality of the bulk and in no circumstances shall it constitute a sale by sample.
- 2.4 Customer relies solely on its own skill and judgment in determining the suitability of the Goods for any particular purpose. Unless otherwise agreed in writing, Customer is solely responsible for ensuring that any performance requirement indicated in any documentation supplied is sufficient and suitable for Customer's purpose.
- 2.5 Customer is solely responsible for the application, use and processing of the Goods. Customer shall be deemed to have carried out its own tests to ensure the suitability of the Goods for their intended purposes and applications.

### **Delivery of Goods**

- 3.1 Unless otherwise specified in the Contract delivery of the Goods will be made ex works (INCOTERMS 2010) at the Delivery Address. FIS will use its reasonable endeavours to make the Goods available for collection by Customer (or its nominated carrier) (or, where agreed, FIS will deliver the Goods), on or around the Estimated Delivery Date. Time of delivery shall not be of the essence.

- 3.2 Delivery will be deemed to take place when the Goods are made available for collection at the Delivery Address. Customer shall collect (or procure the collection of) the Goods during FIS's business hours within 3 working days of FIS notifying Customer the Goods are ready for collection.
- 3.3 Customer shall provide all necessary labour and equipment to enable the Goods to be safely unloaded at the Delivery Address.
- 3.4 FIS shall be entitled to deliver the Goods in instalments in which case each instalment shall be treated as a separate contract and FIS's default or breach in respect of any instalment shall not, subject to clause 3.9, entitle Customer to cancel the remainder of the relevant Contract or any part of it. Notwithstanding this, a failure to accept delivery of and/or pay for any instalment shall entitle FIS to cancel any other instalment or treat the whole Contract as repudiated.
- 3.5 Customer shall inspect the Goods immediately on delivery and must notify FIS within 3 days of receipt of the Goods by telephone or e-mail if the Goods are damaged or if less than the amount ordered has been delivered and within 3 days of the date of invoice in the event of non-delivery and in any event Customer must provide written confirmation of the same within 14 days of receipt of the Goods, or in the case of non-delivery, of the invoice. Customer shall preserve the Goods which are subject to a claim in the same condition as they were delivered for a period of 21 days from date of notification of the claim. During this period Customer shall allow FIS's representative full access at any time during working hours to examine the affected Goods. Customer's sole remedy in respect of any actual damage and/or shortfall will be, in FIS's sole direction (a) the repair or replacement of the damaged Goods and/or (b) delivery of any shortfall.
- 3.6 FIS will not be liable for any damage or shortfall of the Goods that is not notified to it of this Part D and/or where the Goods are not preserved in accordance with clause 3.5 of this Part D. Customer shall to be deemed to have received and accepted all Goods which are not so notified to FIS and such Goods shall be deemed in all respects to be in accordance with the Contract and these Conditions.
- 3.7 Customer acknowledges that FIS shall have no liability if Goods are not stored under suitable conditions and once delivered, FIS cannot ascertain under which conditions Customer has stored Goods.
- 3.8 If for any reason Customer fails to collect the Goods or accept delivery of any of the Goods when they are ready for delivery or, FIS is unable to deliver the Goods by the Estimated Delivery Date because Customer has not provided adequate delivery instructions, documents, licences or authorisations:
- 3.8.1 risk in the Goods shall pass to Customer;
  - 3.8.2 the Goods shall be deemed to have been delivered;
  - 3.8.3 Customer shall remain liable to pay the Price by the date specified in the Contract or, if different, FIS's invoices; and
  - 3.8.4 FIS may store the Goods and Customer shall be liable for all related costs and expenses (including, without limitation, storage and insurance) until such time as the Goods are collected by Customer and/or delivered by FIS.
- 3.9 If FIS is unable to deliver the Goods within 60 days of the Estimated Delivery Date, Customer shall be entitled to cancel the Contract in respect of those Goods. Notwithstanding this, FIS shall not have any liability to Customer for loss or damage of any kind whatsoever whether direct or indirect or consequential (each term including without limitation pure economic loss, loss of profits, loss of business, depletion of goodwill and like loss howsoever caused including as a result of negligence) caused directly or indirectly by any delay in delivery.
- 4 Price and Payment**
- 4.1 The Price for the Goods shall be as set out in the Contract or, if not specified, the Price set out in the quotation, or if no price is stated or the quote is no longer valid, the price specified in FIS's current price list at the date a binding Contract comes into existence in accordance with these Conditions. The Price is exclusive of the costs of delivery, packing, insurance, VAT and any other applicable taxes, duties and charges all of which must be paid by Customer in addition to the Price. If FIS incurs any costs or expenses on behalf of Customer these costs or expenses shall be included in FIS's invoice together with the Price.
- 4.2 The Price may change from that stated in the quotation. FIS reserves the right (at its absolute discretion) to increase the Price at any time prior to delivery to reflect any increase in the cost of supplying the Goods due to factors beyond FIS' reasonable control (including without limit an increase in the costs of raw materials or additional or incomplete instructions or information being provided by Customer).
- 4.3 The Price will be invoiced in advance of, or upon, shipment of the Goods and shall be payable in accordance with Part A of these Conditions.
- 5 Risk and title**
- 5.1 The risk of loss of or damage to the Goods will pass to Customer when the Goods have been delivered to the carrier for delivery to Customer.
- 5.2 Ownership of the Goods will not pass to Customer until FIS receives payment of the Price and all other sums due to FIS in full in cleared funds.
- 5.3 FIS shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from FIS.
- 5.4 Until ownership of the Goods passes to Customer, Customer shall hold the Goods as FIS's fiduciary agent and bailee and shall keep them properly stored, insured and marked as FIS's property.
- 5.5 Prior to the passing of ownership Customer shall be entitled to sell (at full market value) or otherwise use the Goods at its own risk in the ordinary course of its business and in its own capacity. Customer shall account to FIS for such proportion of the proceeds of the sale or use of the Goods as shall equate to the Price or any unpaid part thereof and which it shall keep separate from the monies of Customer or any third party.
- 5.6 Until such time as title to the Goods passes to Customer and, providing the Goods are still in existence and have not been re-sold or incorporated into other goods, FIS shall be entitled to require Customer to deliver up the Goods and, if Customer fails to do so, to enter upon the premises where the Goods are kept to re-possess the same. Customer shall indemnify and hold FIS and its Affiliates harmless in full against all liability, loss, damages, costs and expenses (including, without limitation, legal expenses) awarded against or incurred by FIS in relation to such repossession or attempted repossession.
- 5.7 Customer's right to resell or use the Goods in accordance with clause 5.5 of this Part D shall terminate immediately if:
- 5.7.1 FIS is entitled to terminate the Contract for any reason;
  - 5.7.2 Customer suffers or allows any execution, whether legal or equitable, to be levied on its property or obtained against it, or fails to observe or perform any of its obligations under the Contract or any other contract between FIS and Customer, or is unable to pay any debts as they fall due or Customer ceases to trade; or
  - 5.7.3 FIS acting reasonably notifies Customer in writing that it has bona fide doubts as to the solvency of Customer.
- 5.8 Customer is deemed to have re-sold and/or used the Goods in the order in which they were invoiced by FIS.
- 5.9 Customer may not pledge or charge the Goods by way of security for any indebtedness but, if it does so, all monies due to FIS from Customer shall become immediately due and payable.
- 6 Containers**
- All returnable containers shall remain the property of FIS. Customer shall advise FIS when such containers are empty and Customer shall be responsible for safe and secure storage of the containers until they are collected by FIS.
- 7 Warranties and defects**
- 7.1 FIS warrants that the Goods shall comply with the Specification:
- 7.1.1 upon delivery; and
  - 7.1.2 for a period of 3 months from the date of delivery, provided that the Goods are: (a) stored in accordance with the Specification; (b) used in accordance with all instructions notified to Customer from time to time; and (c) used in accordance with any relevant industry standards and practice.
- 7.2 Customer's only remedy in respect of a breach of the warranty in clause 7.1 of this Part D will be (at FIS's sole discretion) (a) repair or replacement of the Goods or (b) a refund of the Price and any other costs or expenses invoiced by FIS under clause 4 of this Part D.
- 7.3 Customer is responsible for verifying any hazards and conducting any further research necessary to learn the hazards involved in using the Goods. Customer shall warn its purchasers, employees and agents of any risks involved in using or handling the Goods. Customer shall indemnify and hold FIS and its Affiliates harmless in full against all liability, loss, damages, costs and expenses whether direct, indirect or consequential (including, without limitation, legal expenses) awarded against or incurred by FIS as a result of Customer's failure to comply with this clause 7.3.
- 7.4 FIS shall comply with all relevant UK Laws applicable to the manufacture of the Goods. Notwithstanding the same, all warranties, conditions, guarantees and representations that may be implied by statute, common law or otherwise are hereby excluded by FIS to the fullest extent permitted by Law.