

P&O FERRYMASTERS LIMITED

General Conditions : October 2011

1. DEFINITIONS

1.1 In these conditions:

- “the Company” - means P&O Ferrymasters Limited and any other Company within the P&O Ferrymasters Holdings Group;
- “the Customer” - means any person at whose request or on whose behalf the Company undertakes any business or provides advice, information or services;
- “the Conditions” or “these Conditions” - means these General Conditions of the Company (as varied from time to time in accordance with clause 2.4 below) and any other terms and conditions referred to in clause 2;
- “the Goods” - means all goods and merchandise which the Company agrees to carry;
- “Banned Goods” means certain items which the Company will in no circumstances agree to carry, a list of which is published by the Company from time to time and available from the Company on request and at <http://www.poferrymasters.com/banned-cargoes-theft-attractive-goods-TAG.pdf>;
- “Theft Attractive Goods” means certain items which the Company will only agree to carry in accordance with clause 4, a list of which is published by the Company from time to time and available from the Company on request and at <http://www.poferrymasters.com/banned-cargoes-theft-attractive-goods-TAG.pdf>;
- “Transport Unit” - means any device used for the carriage, transportation or storage of the Goods including any container, tanker, tank, vehicle, trailer, vessel, train, aircraft or other equipment of any type whatsoever;
- “the BIFA Conditions” - means the Standard Trading Conditions 2005A Edition published by the British International Freight Association (BIFA) available on request from the Company or from BIFA;
- “the FIATA Conditions” means the Standard Conditions (1992 Edition) governing the FIATA Multimodal Transport Bill of Lading;
- “CMR” - means the Convention on the Contract for the International Carriage of Goods by Road dated 19th May 1956 enacted into English Law by the Carriage of Goods by Road Act 1965;

1.2 The headings in these Conditions are for convenience only and shall not affect their interpretation.

2. APPLICATION

2.1 All and any activities of the Company in the course of business (whether gratuitous or not) are undertaken subject to these Conditions.

2.2 The respective rights and obligations of the parties under these Conditions shall be read and construed as being subject to and governed by the following:

2.2.1 the BIFA Conditions except that the definitions above shall be substituted for the definitions in the BIFA Conditions; and

2.2.2 in respect of carriage or transportation by sea for which the company issues a House Bill of Lading, the FIATA Conditions and the terms of that House Bill of Lading.

2.3 If any International Convention (including CMR) applies and such Convention does not contain any provisions relating to an aspect of the contract or an issue between the Company and the Customer, then, insofar as any of these Conditions do not derogate from such Convention, these Conditions shall apply to that aspect or issue.

- 2.4 No servant or agent of the Company has the power or is permitted to alter or vary these Conditions in any way unless such alteration or variation has been expressly authorised in writing by a Director of the Company.
- 2.5 If any provision in these Conditions is held by any competent tribunal to be invalid or unenforceable in whole or in part, the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected thereby.
- 2.6 Notwithstanding the provisions of clause 2.2.1 and 2.2.2 above the following conditions shall prevail over any other terms and conditions therein referred to in the event of any inconsistency between them.

3. INFORMATION TO BE PROVIDED BY CUSTOMER AT TIME OF BOOKING

- 3.1 The Customer will identify to the Company in writing at the time of each request from the Customer for the carriage of Goods by the Company;
- 3.1.1 The precise nature and value of the Goods to be carried;
- 3.1.2 Any factors in existence at the intended place of loading or the intended place of delivery which may have health & safety implications for the driver and/or the carrying vehicle , including but not limited to any height or width restrictions and any hazardous operations being carried out;
- 3.1.3 Any unique reference number or code allocated to the Goods to be carried, to be used by the Company so as to ensure correct identification of the Goods;
- 3.1.4 Any special requirements of the Customer with regard to the handling, securing, security or transport of the Goods to be carried;
- 3.1.5 Any specific date and time by which the Goods are required to be delivered.
- 3.2 The Company will accept no liability caused by or arising from the failure of the Customer to comply with clause 3.1.

4. BANNED GOODS AND THEFT ATTRACTIVE GOODS

- 4.1 The Company will not in any circumstances accept for carriage Banned Goods;
- 4.2 The Company will only against payment of a surcharge to be agreed with the Customer carry Theft Attractive Goods;
- 4.3 The Company will accept no liability of any nature in relation to Banned Goods or Theft Attractive Goods which are unwittingly and unknowingly carried by the Company by reason of a failure of the Customer to comply with the obligation set out at clause 3.1.1.

5. ENTITLEMENT OF COMPANY TO LIMIT LIABILITY IN RELATION TO OTHER MODES OF TRANSPORT

- 5.1 Without prejudice to the effect of any other provision herein, where any Transport Unit is carried over part of the journey by sea, inland waterway, rail or air: to the extent that it is proved that any loss, damage or delay in delivery of the Goods occurred during the carriage by sea, inland waterway, rail or air, such carriage shall be subject to the condition that the Company accepts the same liability to the Customer in respect of the Goods as that to which the actual carrier by sea, inland waterway, rail or air (as the case may be) would have been subject had the Customer made a separate direct contract with such carrier subject to the actual carrier's terms and conditions of business provided those terms and conditions do not impose a liability greater than:
- 5.1.1 in the case of carriage to which any international convention applies, the limits of liability set out in the applicable convention;
- 5.1.2 in the case of carriage by sea which is subject to the terms and conditions of the sea carrier, the limits of liability set out in such terms and conditions;
- 5.1.3 in all other cases the limits of liability set out in Clause 26 of the BIFA Conditions.

6. INDEMNITY AGAINST LIABILITY INCURRED BY THE COMPANY

6.1 The Customer will indemnify the Company in respect of any liability, customs duties, fines, taxes or other charges incurred by the Company as a result of or in connection with the carriage of the Goods, save to the extent that any such obligation results directly from any act, error or omission on the part of the Company.

7. LOADING & UNLOADING OF VEHICLES AND SUPPLY OF 'STAND' TRAILERS

7.1 The Company accepts no responsibility for the loading to and unloading of Goods from the Transport Unit at the place of collection and the place of delivery respectively, and no liability shall attach to the Company in respect of any loss or damage to the Goods during such operations.

7.2 The Customer shall at all times remain liable for the acts or omissions of its employees, servants or agents who are engaged in loading and unloading operations, and will indemnify the Company in accordance with clause 6 above in respect of any loss, damage or liability resulting from such operations.

7.3 For the avoidance of doubt, the driver of the Transport Unit may offer assistance in the loading and unloading of the Transport Unit in order to ensure compliance with applicable safety regulations but the Customer shall remain liable for any breach of such regulations and shall indemnify the Company in accordance with clause 6 above.

7.4 Where the Company supplies to and leaves with the Customer a Transport Unit for the Customer to load the Customer will indemnify the Company in respect of any loss or damage sustained to or caused by the Transport Unit prior to collection of that Transport Unit by the Company from the Customer.

8. COMPANY'S CHARGES

8.1 The Company's charges for the business or services undertaken or provided shall be payable by the Customer without prejudice to the Company's rights against any owner of the Goods or the Goods themselves.

8.2 Where the Company exercises any power of sale of the Goods, the Company shall be entitled to sell on the basis of the best offer immediately available to it without obligation to investigate any specialist market in such type of merchandise.

8.3 Any claim or counterclaim by the Customer against the Company shall not be made the reason for deferring or withholding payment of the Company's charges or any other amount due to the Company from the Customer.

8.4 The Company's charges shall be paid by the Customer in full within 30 days from the invoice date, unless the Company shall in writing have stipulated some other time limit.

8.5 The Company is entitled to charge interest from the date on which the Company's charges become payable at the rate stipulated in the Late Payment of Commercial Debts (Interest) Act 1998, or any amendment of that Act.

8.6 In the event of failure by the Customer to pay the Company's charges in accordance with this clause and without prejudice to the terms of Clauses 8, 9 & 10 of the BIFA Conditions any credit agreement made between the Company and the Customer shall be cancelled upon 24 hours written notice from the Company to the Customer by any normal means of business communication. Upon expiry of the 24 hour notice period all sums due to the Company shall immediately become due and owing.

9. COMPLIANCE WITH ANTI-CORRUPTION LAWS

9.1 The Company does not and will not participate in any form of bribery or corruption. It is our policy to comply with all laws, rules and regulations governing bribery and corruption in all the countries in which we operate.

10. APPLICABLE LAW AND JURISDICTION

10.1 These conditions shall be subject to English law, and any claim brought against the Company shall be subject to the exclusive jurisdiction of the Courts of England.



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**BRITISH INTERNATIONAL FREIGHT ASSOCIATION (BIFA) STANDARD TRADING CONDITIONS
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THE CUSTOMER'S ATTENTION IS DRAWN TO SPECIFIC CLAUSES HEREOF WHICH EXCLUDE OR LIMIT THE COMPANY'S LIABILITY AND THOSE WHICH REQUIRE THE CUSTOMER TO INDEMNIFY THE COMPANY IN CERTAIN CIRCUMSTANCES AND THOSE WHICH LIMIT TIME AND THOSE WHICH DEAL WITH CONDITIONS OF ISSUING EFFECTIVE GOODS INSURANCE BEING CLAUSES 8, 10, 11(A) and 11(B) 12-14 INCLUSIVE, 18-20 INCLUSIVE, AND 24-27 INCLUSIVE

All headings are indicative and do not form part of these conditions

DEFINITIONS AND APPLICATION

1 In these conditions the following words shall have the following meanings:-

"Company"	the BIFA member trading under these conditions
"Consignee"	the Person to whom the goods are consigned
"Customer"	any Person at whose request or on whose behalf the Company undertakes any business or provides advice, information or services
"Direct Representative"	the Company acting in the name of and on behalf of the Customer and/or Owner with H.M. Revenue and Customs ("HMRC") as defined by Council Regulation 2913/92 or as amended
"Goods"	the cargo to which any business under these conditions relates
"Person"	natural person(s) or any body or bodies corporate
"SDR"	are Special Drawing Rights as defined by the International Monetary Fund
"Transport Unit"	packing case, pallets, container, trailer, tanker, or any other device used whatsoever for and in connection with the carriage of Goods by land, sea or air
"Owner"	the Owner of the Goods or Transport Unit and any other Person who is or may become interested in them

2(A) Subject to sub-paragraph (B) below, all and any activities of the Company in the course of business, whether gratuitous or not, are undertaken subject to these conditions.

(B) If any legislation, to include regulations and directives, is compulsorily applicable to any business undertaken, these conditions shall, as regards such business, be read as subject to such legislation, and nothing in these conditions shall be construed as a surrender by the Company of any of its rights or immunities or as an increase of any of its responsibilities or liabilities under such legislation, and if any part of these conditions be repugnant to such legislation to any extent, such part shall as regards such business be overridden to that extent and no further.

3 The Customer warrants that he is either the Owner, or the authorised agent of the Owner and, also, that he is accepting these conditions not only for himself, but also as agent for and on behalf of the Owner.



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THE COMPANY

- 4(A) Subject to clauses 11 and 12 below, the Company shall be entitled to procure any or all of the services as an agent, or, to provide those services as a principal.
- (B) The Company reserves to itself full liberty as to the means, route and procedure to be followed in the performance of any service provided in the course of business undertaken subject to these conditions.
- 5 When the Company contracts as a principal for any services, it shall have full liberty to perform such services itself, or, to subcontract on any terms whatsoever, the whole or any part of such services.
- 6(A) When the Company acts as an agent on behalf of the Customer, the Company shall be entitled, and the Customer hereby expressly authorises the Company, to enter into all and any contracts on behalf of the Customer as may be necessary or desirable to fulfil the Customer's instructions, and whether such contracts are subject to the trading conditions of the parties with whom such contracts are made, or otherwise.
- (B) The Company shall, on demand by the Customer, provide evidence of any contract entered into as agent for the Customer. Insofar as the Company may be in default of the obligation to provide such evidence, it shall be deemed to have contracted with the Customer as a principal for the performance of the Customer's instructions.
- 7 In all and any dealings with HMRC for and on behalf of the Customer and/or Owner, the Company is deemed to be appointed, and acts as, Direct Representative only.
- 8(A) Subject to sub-clause (B) below,
the Company:
- (i) has a general lien on all Goods and documents relating to Goods in its possession, custody or control for all sums due at any time to the Company from the Customer and/or Owner on any account whatsoever, whether relating to Goods belonging to, or services provided by or on behalf of the Company to the Customer or Owner. Storage charges shall continue to accrue on any Goods detained under lien;
- (ii) shall be entitled, on at least 28 days notice in writing to the Customer, to sell or dispose of or deal with such Goods or documents as agent for, and at the expense of, the Customer and apply the proceeds in or towards the payment of such sums;
- (iii) shall, upon accounting to the Customer for any balance remaining after payment of any sum due to the Company, and for the cost of sale and/or disposal and/or dealing, be discharged of any liability whatsoever in respect of the Goods or documents.
- (B) When the Goods are liable to perish or deteriorate, the Company's right to sell or dispose of or deal with the Goods shall arise immediately upon any sum becoming due to the Company, subject only to the Company taking reasonable steps to bring to the Customer's attention its intention to sell or dispose of the Goods before doing so.



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- 9 The Company shall be entitled to retain and be paid all brokerages, commissions, allowances and other remunerations customarily retained by, or paid to, freight forwarders.
- 10(A) Should the Customer, Consignee or Owner of the Goods fail to take delivery at the appointed time and place when and where the company is entitled to deliver, the Company shall be entitled to store the Goods, or any part thereof, at the sole risk of the Customer or Consignee or Owner, whereupon the Company's liability in respect of the Goods, or that part thereof, stored as aforesaid, shall wholly cease. The Company's liability, if any, in relation to such storage, shall be governed by these conditions. All costs incurred by the Company as a result of the failure to take delivery shall be deemed as freight earned, and such costs shall, upon demand, be paid by the Customer.
- (B) The Company shall be entitled at the expense of the Customer to dispose of or deal with (by sale or otherwise as may be reasonable in all the circumstances):-
- (i) after at least 28 days notice in writing to the Customer, or (where the Customer cannot be traced and reasonable efforts have been made to contact any parties who may reasonably be supposed by the Company to have any interest in the Goods) without notice, any Goods which have been held by the Company for 90 days and which cannot be delivered as instructed; and
 - (ii) without prior notice, any Goods which have perished, deteriorated, or altered, or are in immediate prospect of doing so in a manner which has caused or may reasonably be expected to cause loss or damage to the Company, or third parties, or to contravene any applicable laws or regulations.
- 11(A) No insurance will be effected except upon express instructions given in writing by the Customer and accepted in writing by the Company, and all insurances effected by the Company are subject to the usual exceptions and conditions of the policies of the insurers or underwriters taking the risk. Unless otherwise agreed in writing, the Company shall not be under any obligation to effect a separate insurance on the goods, but may declare it on any open or general policy held by the Company.
- (B) Insofar as the Company agrees to effect insurance, the Company acts solely as agent for the Customer, and the limits of liability under clause 26(A) (ii) of these conditions shall not apply to the Company's obligations under clause 11.
- 12(A) Except under special arrangements previously made in writing by an officer of the Company so authorised, or made pursuant to or under the terms of a printed document signed by the Company, any instructions relating to the delivery or release of the Goods in specified circumstances (such as, but not limited to, against payment or against surrender of a particular document) are accepted by the Company, where the Company has to engage third parties to effect compliance with the instructions, only as agents for the Customer.
- (B) Despite the acceptance by the Company of instructions from the Customer to collect freight, duties, charges, dues, or other expenses from the Consignee, or any other Person, on receipt of evidence of proper demand by the Company, and, in the absence of evidence of payment (for whatever reason) by such Consignee, or other Person, the Customer shall remain responsible for such freight, duties, charges, dues, or other expenses.



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- (C) The Company shall not be under any liability in respect of such arrangements as are referred to under sub-clause (A) and (B) hereof save where such arrangements are made in writing, and in any event, the Company's liability in respect of the performance of, or arranging the performance of, such instructions shall not exceed the limits set out in clause 26(A) (ii) of these conditions.
- 13 Advice and information, in whatever form it may be given, is provided by the Company for the Customer only. The Customer shall indemnify the Company against all loss and damage suffered as a consequence of passing such advice or information on to any third party.
- 14 Without prior agreement in writing by an officer of the Company so authorised, the Company will not accept or deal with Goods that require special handling regarding carriage, handling, or security whether owing to their thief attractive nature or otherwise including, but not limited to bullion, coin, precious stones, jewellery, valuables, antiques, pictures, human remains, livestock, pets, plants. Should any Customer nevertheless deliver any such goods to the Company, or cause the Company to handle or deal with any such goods, otherwise than under such prior agreement, the Company shall have no liability whatsoever for or in connection with the goods, howsoever arising.
- 15 Except pursuant to instructions previously received in writing and accepted in writing by the Company, the Company will not accept or deal with Goods of a dangerous or damaging nature, nor with Goods likely to harbour or encourage vermin or other pests, nor with Goods liable to taint or affect other Goods. If such Goods are accepted pursuant to a special arrangement, but, thereafter, and in the opinion of the Company, constitute a risk to other goods, property, life or health, the Company shall, where reasonably practicable, contact the Customer in order to require him to remove or otherwise deal with the goods, but reserves the right, in any event, to do so at the expense of the Customer.
- 16 Where there is a choice of rates according to the extent or degree of the liability assumed by the Company and/or third parties, no declaration of value will be made and/or treated as having been made except under special arrangements previously made in writing by an officer of the Company so authorised as referred to in clause 26(D).

THE CUSTOMER

- 17 The Customer warrants:
- (A) (i) that the description and particulars of any Goods or information furnished, or services required, by or on behalf of the Customer are full and accurate, and
- (ii) that any Transport Unit and/or equipment supplied by the Customer in relation to the performance of any requested service is fit for purpose, and
- (B) that all Goods have been properly and sufficiently prepared, packed, stowed, labelled and/or marked, and that the preparation, packing, stowage, labelling and marking are appropriate to any operations or transactions affecting the Goods and the characteristics of the Goods.
- (C) that where the Company receives the Goods from the Customer already stowed in or on a Transport Unit, the Transport Unit is in good condition, and is suitable for the carriage to the intended destination of the Goods loaded therein, or thereon, and



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- (D) that where the Company provides the Transport Unit, on loading by the Customer, the Transport Unit is in good condition, and is suitable for the carriage to the intended destination of the Goods loaded therein, or thereon.
- 18 Without prejudice to any rights under clause 15, where the Customer delivers to the Company, or causes the Company to deal with or handle Goods of a dangerous or damaging nature, or Goods likely to harbour or encourage vermin or other pests, or Goods liable to taint or affect other goods, whether declared to the Company or not, he shall be liable for all loss or damage arising in connection with such Goods, and shall indemnify the Company against all penalties, claims, damages, costs and expenses whatsoever arising in connection therewith, and the Goods may be dealt with in such manner as the Company, or any other person in whose custody they may be at any relevant time, shall think fit.
- 19 The Customer undertakes that no claim shall be made against any director, servant, or employee of the Company which imposes, or attempts to impose, upon them any liability in connection with any services which are the subject of these conditions, and, if any such claim should nevertheless be made, to indemnify the Company against all consequences thereof.
- 20 The Customer shall save harmless and keep the Company indemnified from and against:-
- (A) all liability, loss, damage, costs and expenses whatsoever (including, without prejudice to the generality of the foregoing, all duties, taxes, imposts, levies, deposits and outlays of whatsoever nature levied by any authority in relation to the Goods) arising out of the Company acting in accordance with the Customer's instructions, or arising from any breach by the Customer of any warranty contained in these conditions, or from the negligence of the Customer, and
- (B) without derogation from sub-clause (A) above, any liability assumed, or incurred by the Company when, by reason of carrying out the Customer's instructions, the Company has become liable to any other party, and
- (C) all claims, costs and demands whatsoever and by whomsoever made or preferred, in excess of the liability of the Company under the terms of these conditions, regardless of whether such claims, costs, and/or demands arise from, or in connection with, the breach of contract, negligence or breach of duty of the Company, its servants, sub-contractors or agents, and
- (D) any claims of a general average nature which may be made on the Company.
- 21(A) The Customer shall pay to the Company in cash, or as otherwise agreed, all sums when due, immediately and without reduction or deferment on account of any claim, counterclaim or set-off.
- (B) The Late Payment of Commercial Debts (Interest) Act 1998, as amended, shall apply to all sums due from the Customer
- 22 Where liability arises in respect of claims of a general average nature in connection with the Goods, the Customer shall promptly provide security to the Company, or to any other party designated by the Company, in a form acceptable to the Company.



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LIABILITY AND LIMITATION

- 23 The Company shall perform its duties with a reasonable degree of care, diligence, skill and judgment.
- 24 The Company shall be relieved of liability for any loss or damage if, and to the extent that, such loss or damage is caused by:-
- (A) strike, lock-out, stoppage or restraint of labour, the consequences of which the Company is unable to avoid by the exercise of reasonable diligence; or
 - (B) any cause or event which the Company is unable to avoid, and the consequences of which the company is unable to prevent by the exercise of reasonable diligence.
- 25 Except under special arrangements previously made in writing by an officer of the Company so authorised, the Company accepts no responsibility with regard to any failure to adhere to agreed departure or arrival dates of Goods.
- 26(A) Subject to clause 2(B) and 11(B) above and sub-clause (D) below, the Company's liability howsoever arising and, notwithstanding that the cause of loss or damage be unexplained, shall not exceed
- (i) in the case of claims for loss or damage to Goods:
 - (a) the value of any loss or damage, or
 - (b) a sum at the rate of 2 SDR per kilo of the gross weight of any Goods lost or damagedwhichever shall be the lower.
 - (ii) subject to (iii) below, in the case of all other claims:
 - (a) the value of the subject Goods of the relevant transaction between the Company and its Customer, or
 - (b) where the weight can be defined, a sum calculated at the rate of two SDR per kilo of the gross weight of the subject Goods of the said transaction, or
 - (c) 75,000 SDR in respect of any one transaction,whichever shall be the least.
 - (iii) in the case of an error and/or omission, or a series of errors and/or omissions which are repetitions of or represent the continuation of an original error, and/or omission
 - (a) the loss incurred, or
 - (b) 75,000 SDR in the aggregate of any one trading year commencing from the time of the making of the original error, and/or omission,



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whichever shall be the lower.

For the purposes of clause 26(A), the value of the Goods shall be their value when they were, or should have been, shipped. The value of SDR shall be calculated as at the date when the claim is received by the Company in writing.

- (B) Subject to clause 2(B) above and sub-clause (D) below, the Company's liability for loss or damage as a result of failure to deliver, or arrange delivery of goods, in a reasonable time, or (where there is a special arrangement under Clause 25) to adhere to agreed departure or arrival dates, shall not in any circumstances whatever exceed a sum equal to twice the amount of the Company's charges in respect of the relevant contract.
- (C) Save in respect of such loss or damage as is referred to at sub-clause (B), and subject to clause 2(B) above and Sub-Clause (D) below, the Company shall not in any circumstances whatsoever be liable for indirect or consequential loss such as (but not limited to) loss of profit, loss of market, or the consequences of delay or deviation, however caused.
- (D) On express instructions in writing declaring the commodity and its value, received from the Customer and accepted by the Company, the Company may accept liability in excess of the limits set out in sub-clauses (A) to (C) above upon the Customer agreeing to pay the Company's additional charges for accepting such increased liability. Details of the Company's additional charges will be provided upon request.

27(A) Any claim by the Customer against the Company arising in respect of any service provided for the Customer, or which the Company has undertaken to provide, shall be made in writing and notified to the Company within 14 days of the date upon which the Customer became, or ought reasonably to have become, aware of any event or occurrence alleged to give rise to such claim, and any claim not made and notified as aforesaid shall be deemed to be waived and absolutely barred, except where the Customer can show that it was impossible for him to comply with this time limit, and that he has made the claim as soon as it was reasonably possible for him to do so.

- (B) Notwithstanding the provisions of sub-paragraph (A) above, the Company shall in any event be discharged of all liability whatsoever and howsoever arising in respect of any service provided for the Customer, or which the Company has undertaken to provide, unless suit be brought and written notice thereof given to the Company within nine months from the date of the event or occurrence alleged to give rise to a cause of action against the Company.

JURISDICTION AND LAW

28 These conditions and any act or contract to which they apply shall be governed by English law and any dispute arising out of any act or contract to which these Conditions apply shall be subject to the exclusive jurisdiction of the English courts.