

## 1. APPLICABILITY

These Terms & Conditions apply to the provision of rolling stock Storage Services by, or on behalf of, the Supplier under the terms of Storage Contracts entered into on or after 1 April 2025.

## 2. DEFINITIONS

Where used in these Terms & Conditions, the following terms shall have the meanings given to them below:

**Accrued WIP** means, in the context of any given Storage Contract, and for any given Invoicing Period thereunder, the aggregate of all amounts of:

- (a) Storage Price; and
- (b) (where applicable) Maintenance Price,

that have accrued in respect of Storage Services provided by the Supplier during the Invoicing Period in question.

**Commercial Particulars** means, in the context of any given Storage Contract, the “Storage Contract - Commercial Particulars” document prepared by the Supplier and issued to the Customer, which supplements these Terms & Conditions by setting out the bespoke commercial and operational terms that will (once confirmed under a valid Confirmation) apply to the Storage Contract in question.

**Confidential Information** means, in the context of any given Storage Contract, the Commercial Particulars applicable to such Storage Contract and any information connected therewith, or with either party, which is (in whole or in part) secret, of potential commercial sensitivity or otherwise not publicly available, including commercial, financial, marketing or technical information, know-how, trade secrets or business methods, or any data, in all cases whether disclosed orally or in writing before or after the date of such Storage Contract.

**Confirmation** means a formal confirmation on behalf of the Customer (in one of the permissible forms specified below), that it agrees to Supplier’s offered terms for the provision of relevant Storage Services (as collectively described in these Terms & Conditions and the relevant Commercial Particulars). The permissible forms in which a Confirmation may be given are:

- (a) the issuance by the Customer of a signed and dated copy of the final, agreed Commercial Particulars for the Storage Contract in question; or
- (b) where the Supplier has indicated that this would be acceptable, an email from the Customer to the Supplier confirming its desire to proceed on the basis of the terms offered (as described in these Terms & Conditions and the relevant Commercial Particulars).

If a Customer should seek to give a verbal Confirmation, the Supplier may (in its absolute and unfettered discretion) either: (i) decline such Confirmation, until the Customer has (within the applicable Validity Period) re-confirmed it by one of the methods in (a) or (b) above; or (ii) accept the verbal Confirmation, by confirming the same back in writing to the Customer (including via email).

**Customer** means, in the context of any given Storage Contract, the entity identified as such in the related Commercial Particulars.

**Customer Rolling Stock** means, in the context of any given Storage Contract, the relevant rolling stock in respect of which the Supplier is being contracted to provide Storage Services, as more fully described in the associated Commercial Particulars.

**Insolvency Event** means, in respect of any party, any situation in which that party:

- (a) suspends, or threatens to suspend, payment of its debts (whether principal or interest) or is deemed to be unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986;
- (b) calls a meeting, gives a notice, passes a resolution or files a petition, or an order is made, in connection with the winding up of that party (save for the sole purpose of a solvent voluntary reconstruction or amalgamation);
- (c) has an application to appoint an administrator made or a notice of intention to appoint an administrator filed or an administrator is appointed in respect of it or all or any part of its assets;
- (d) has a receiver or administrative receiver appointed over all or any part of its assets or a person becomes entitled to appoint a receiver or administrative receiver over such assets;
- (e) calls a meeting, gives a notice, passes a resolution, makes an application or files documents, or an order is made, or any other steps are taken in respect of obtaining a moratorium or a moratorium is obtained for that party;
- (f) takes any steps in connection with proposing a reorganisation of the party (whether by way of voluntary arrangement, company voluntary arrangement, scheme of arrangement, compromise or arrangement or otherwise) or any such reorganisation is effected in relation to it, or it commences negotiations with all or any of its creditors with a view to rescheduling any of its debts;
- (g) has any steps taken by a secured lender to obtain possession of the property on which it has security or otherwise to enforce its security;
- (h) has any distress, execution or sequestration or other such process levied or enforced on any of its assets; or
- (i) has any proceeding taken, with respect to it in any jurisdiction to which it is subject, or any event happens in such jurisdiction that has an effect equivalent or similar to any of the events in sub-clauses (a) to (h) above.

**Invoicing Periodicity** means, in the context of any given Storage Contract, the relevant periodic basis (e.g. weekly/monthly) on which the Supplier shall be entitled to invoice the Customer for the Storage Services provided, as set out within the Commercial Particulars that form part of such Storage Contract (and with the relevant period between each successive set of invoices being an **Invoicing Period**).

**Maintenance Price** means, where applicable in the context of any Storage Contract, the price payable by the Customer for any Warm Storage Services to be provided by the Supplier thereunder, as set out within the related Commercial Particulars.

**Minimum Required Notice for Voluntary Termination** means, in connection with any voluntary termination of a Storage Contract under clause 10.1 (*Voluntary Termination*), the relevant period of prior written notice, which is required to be provided in that regard, as set out in the Commercial Particulars.

**Relevant Site** means, in the context of any given Storage Contract, whichever of:

- (a) the Crewe South Yard site (as more fully described in Schedule 1, Part 1;
- (b) the Castle Donington site (as more fully described in Schedule 1, Part 2; or
- (c) the MOD Bicester site (as more fully described in Schedule 1, Part 3,

is named, in the related Commercial Particulars, as being the “Relevant Site” for the purposes of that Storage Contract.

**Relevant Third Party** means, in relation to the relevant Customer Rolling Stock, any third party which either: (i) owns; or (ii) holds any other proprietary, security or possessory interest in such Customer Rolling Stock.

**Representative** means, in the case of either party, the individual authorised to represent such party in the context of a given Storage Contract, as identified in the Commercial Particulars related to such Storage Contract.

**ROG Company** means any of the following companies, within the Rail Operations Group:

- (a) Rail Operations Group Limited;
- (b) Rail Operations (UK) Limited; or
- (c) Rail Operations (Rolling Stock Management) Limited.

**Site Boundary** means, in respect of any Relevant Site, the relevant location, at the boundary of such Relevant Site, to and from which the Customer shall be responsible for delivering/collecting the Customer Rolling Stock at the start and end of the applicable Storage Period, as set out in the applicable Site-Specific Conditions.

**Site-Specific Conditions** means, in the context of any given Storage Contract:

- (a) where Crewe South Yard is the Relevant Site, for the purposes of such Storage Contract, the site-specific provisions which apply to the Crewe South Yard site, as more fully described in Schedule 1, Part 1;
- (b) where Castle Donington is the Relevant Site, for the purposes of such Storage Contract, the site-specific provisions which apply to the Castle Donington site, as more fully described in Schedule 1, Part 2; or
- (c) where MOD Bicester is the Relevant Site, for the purposes of such Storage Contract, the site-specific provisions which apply to the MOD Bicester site, as more fully described in Schedule 1, Part 3.

**Standard Demobilisation Arrangements** has the meaning given to it in clause 10.1.

**Storage Contract** means a consummated agreement between the Supplier and a Customer which fully defines the terms and conditions applicable to the provision of defined Storage Services, in each case comprised of:

- (a) the general provisions of these Terms & Conditions, including the Site-Specific Conditions applicable to the Relevant Site involved; and
- (b) the bespoke detail set out in the related Commercial Particulars, all as confirmed pursuant to a Confirmation.

**Storage Period** means, in the context of any given Storage Contract, the period during which relevant Storage Services are to be provided by the Supplier thereunder, as set out within the Commercial Particulars that form part of such Storage Contract.

**Storage Price** means, in the context of any Storage Contract, the price payable by the Customer for the pure storage element of the Storage Services in question (inclusive of the access charge applicable to rolling stock entries onto the Relevant Site), as set out within the Commercial Particulars that form part of such Storage Contract.

**Storage Services** means, in the context of any given Storage Contract:

- (a) the provision by the Supplier of available capacity at the Relevant Site for the storage of Customer Rolling Stock; and

(b) where applicable, any related Warm Storage Services, in each case as more fully described in the applicable Commercial Particulars.

**Supplier** means Rail Operations Group Limited, whose details are more fully set out, in the Commercial Particulars.

**Validity Period** means, in the context of any commercial offer made by the Supplier, under clause 3.2, for the provision of any requested Storage Services, the relevant period for which such offer is expressed to remain valid, as set out in the related draft Commercial Particulars.

**Variation** means a formal written variation to the terms of any Storage Contract, which complies with the requirements of clause 9 below.

**Warm Storage Services** means, in the context of a given Storage Contract, any additional maintenance services which are to be provided by the Supplier thereunder, as more fully defined in the relevant Warm Storage Specification referred to in the applicable Commercial Particulars.

**Warm Storage Specification** means, where Warm Storage Services are to be provided under a given Storage Contract, the relevant specification which more fully defines the work scope, technical detail and any other related matters pertaining to such Warm Storage Services, as referred to in the applicable Commercial Particulars.

### 3. CREATION OF STORAGE CONTRACTS

#### 3.1 Composition of Storage Contracts

Each Storage Contract shall be comprised of:

- 3.1.1 the general provisions of these Terms & Conditions (including the Site-Specific Conditions applicable to the Relevant Site involved); and
- 3.1.2 the bespoke detail set out in the related Commercial Particulars for the Storage Services in question, as confirmed pursuant to a Confirmation from the Customer.

#### 3.2 Formation of Storage Contracts

- 3.2.1 Where a Customer approaches the Supplier with a request to provide (or propose terms for the provision of) any relevant Storage Services, the Supplier will (if it is willing and able to provide such Storage Services) populate a draft set of Commercial Particulars with the bespoke commercial and operational details that (together with these Terms & Conditions) describe the basis upon which the Supplier offers to provide such Storage Services.
- 3.2.2 Where applicable:
  - (a) the Customer shall have the opportunity to raise any questions or seek any amendments to the terms offered by the Supplier; and
  - (b) to the extent the Supplier is willing to accommodate any requested amendments, it shall prepare an updated draft of the relevant Commercial Particulars, and re-issue the same to the Customer.
- 3.2.3 Once terms have been agreed between the parties and they are ready to formalise the Storage Contract in question:
  - (a) the Supplier shall re-issue the Commercial Particulars in final form; and

- (b) request a Confirmation from the Customer, upon the receipt of which the relevant Storage Contract will be consummated and become contractually binding.

### 3.3 Validity Periods

Each offer extended by the Supplier, pursuant to a draft set of Commercial Particulars, shall remain in place for its stated Validity Period, whereafter:

- 3.3.1 the offered terms will lapse; and
- 3.3.2 the Customer shall need to obtain from the Supplier either an updated or re-confirmed set of Commercial Particulars, before any Confirmation can validly be given.

### 3.4 Primacy of Terms & Conditions

- 3.4.1 Subject only to any express amendments, supplements or qualifications contained in the related set of Commercial Particulars, these Terms & Conditions (including the Site-Specific Conditions applicable to the Relevant Site involved) shall apply to any and all Storage Services provided by the Supplier pursuant to the terms of a Storage Contract.
- 3.4.2 As the applicability of these Terms & Conditions is advertised on the face of the Commercial Particulars, and a copy can be freely accessed via the weblink contained therein, the Customer's issuance of a Confirmation shall conclusively signify and confirm:
  - (a) the Customer's awareness of, and agreement to, these Terms & Conditions; and
  - (b) the Customer's acceptance that these Terms & Conditions take precedence over (and apply to the exclusion of) any contrary or alternative provisions which may be referenced in any separately-produced Customer documentation (so that, for instance, if any Customer-generated purchase order purports to provide for longer payment terms than are set out in the Storage Contract, then the terms of the Storage Contract shall prevail and the wording on the face of the purchase order shall be of no force or effect).

## 4. STORAGE ARRANGMENTS - GENERAL

### 4.1 Site-Specific Conditions

- 4.1.1 All storage of Customer Rolling Stock at a Relevant Site shall be provided subject to and on the basis of the Site-Specific Conditions applicable to the Relevant Site.
- 4.1.2 In particular, the Customer is hereby made aware that:
  - (a) the Supplier is itself subject to substantially similar site-specific conditions under the terms of its own access rights to the Relevant Sites; and
  - (b) the relevant site owners/site managers retain certain rights which, if exercised, could frustrate the Supplier's ability (either in whole or in part, and either temporarily or permanently) to provide (or continue providing) the contemplated Storage Services.
- 4.1.3 In the event of any conflict between: (i) these general Terms & Conditions; and (ii) the Site-Specific Conditions applicable to the Relevant Site in question, the terms of those Site-Specific Conditions shall take precedence.

### 4.2 Nature of Customer's rights

Where, under the terms of a Storage Contract, the Supplier has agreed to make a defined level of capacity available to the Customer, at a Relevant Site, for the storage of Customer Rolling Stock:

- 4.2.1 this shall not confer on the Customer any rights of exclusive possession in relation to either the Relevant Site itself, nor any particular area of track or sidings within the Relevant Site (and the Customer acknowledges and agrees that, as between the parties, the Supplier shall be deemed to retain exclusive possession and control of the Relevant Site and may enter onto and remain on the Relevant Site at any time and for any such purpose as the Supplier may require);
- 4.2.2 as between the parties, the Supplier shall have sole and exclusive discretion as to which particular area of track or sidings are to be used for the storage of the Customer Rolling Stock;
- 4.2.3 nothing within the terms of the relevant Storage Contract is intended to constitute any letting or sub-letting of the Relevant Site or to confer any rights on the Customer greater than a bare agreement on the terms of that Storage Contract.

The Customer's rights shall be purely contractual rights, as against the Supplier, and the Customer shall neither acquire nor claim any freehold, leasehold, tenancy or other proprietary or possessory interest whatsoever in the Relevant Site itself, nor any particular area of track or sidings within the Relevant Site.

### 4.3 Delivery and collection of Customer Rolling Stock

The Customer shall in all cases be responsible for transporting the Customer Rolling Stock to, and collecting the Customer Rolling Stock from, the Site Boundary at the start and end of the relevant Storage Period.

### 4.4 Movements onto/off the Relevant Site

- 4.4.1 The Commercial Particulars applicable to the Storage Contract in question shall specify whether the Customer or the Supplier is then to be responsible (at the start and end of the Storage Period) for the movement/shunting of Customer Rolling Stock between the Site Boundary and the particular area of track or sidings, within the Relevant Site, where the Customer Rolling Stock is being, or is to be, stored.
- 4.4.2 Where the Customer is to effect such movement or shunting of the relevant Customer Rolling Stock, it shall:
  - (a) do so under the guidance and supervision of the Supplier, and in accordance with the Supplier's specific instructions, including:
    - (i) (at the start of the Storage Period) as to the particular area of track or sidings within the Relevant Site where the Customer Rolling Stock is (initially) to be stored; and
    - (ii) as to any relevant steps and precautions that are to be adhered to under applicable method statements and/or risk assessments in place at the Relevant Site;
  - (b) comply with any and all applicable laws, standards or best practices which relate to such movements;
  - (c) perform such movements with the appropriate level of skill and care; and

- (d) use only such personnel as are suitably skilled, experienced and qualified to undertake such movements.

4.4.3 Where the Supplier is to effect such movement or shunting of the relevant Customer Rolling Stock, it shall:

- (a) observe all relevant steps and precautions laid out in any applicable method statements and/or risk assessments in place at the Relevant Site;
- (b) comply with any and all applicable laws, standards or best practices which relate to such movements;
- (c) perform such movements with the appropriate level of skill and care; and
- (d) use only such personnel as are suitably skilled, experienced and qualified to undertake such movements.

#### 4.5 Movements within the Relevant Site during Storage Period

Where necessary or desirable, during the Storage Period, including (without limitation) for the purposes of:

- 4.5.1 optimising the deployment of available capacity at the Relevant Site;
- 4.5.2 facilitating the efficient day-to-day use and operation of the Relevant Site by the Supplier and other users; and/or
- 4.5.3 in connection with the provision of any Warm Storage Services,

the Supplier shall be authorised to effect any relevant shunts or other movements of the Customer Rolling Stock within and around the Relevant Site (in which regard, the requirements of clause 4.4.3 above shall apply equally to any such shunts/movements).

#### 4.6 Access to Relevant Site and Customer Rolling Stock

4.6.1 Should the Customer, during the Storage Period, require access to the Relevant Site and/or the Customer Rolling Stock (whether for itself, for any Relevant Third Party, or for any third-party maintenance provider):

- (a) the Customer shall:
  - (i) contact the Supplier in advance, so as to give reasonable notice of its request for access; and
  - (ii) advise the Supplier as to the intended purpose of the requested access (e.g. for a mere visual inspection, or because the Customer wishes to carry out (or have carried out) certain works on the Customer Rolling Stock); and
- (c) the Supplier shall revert to the Customer as soon as reasonably practicable (bearing in mind the potential need to engage with the site owner/manager) with the relevant detail as to:
  - (i) how and when such access might be granted; and
  - (ii) and any terms, conditions or procedures which might need to apply to the granting of such access.

4.6.2 In these regards, the Customer acknowledges that different rules and procedures apply, as between the different Relevant Sites, and that (notably, but not exclusively, in the case of the MOD Bicester site) the Supplier's ability to grant such access (and any terms, conditions or procedures which might need to apply to

the granting of such access) will be governed by the relevant Site-Specific Conditions in question.

4.6.3 The Supplier shall, in any case, use its reasonable endeavours to accommodate the Customer's request in a timely fashion, and to procure such accommodation from the owner/manager of the Relevant Site.

#### 4.7 General Customer obligations and restrictions

Throughout the Storage Period, the Customer shall:

- 4.7.1 not hold itself out to any third party as having any right to sub-let or licence any part of the Relevant Site, nor to negotiate for any other provision of access to or possession of the Relevant Site, on behalf of the Supplier or any site owner/manager;
- 4.7.2 not make any alterations or additions to the Relevant Site;
- 4.7.3 comply with all reasonable instructions of the Supplier in connection with its use of, or access to, the Relevant Site (in which regard, any instructions which have been mandated to the Supplier by the applicable owner/manager of the Relevant Site shall be deemed reasonable);
- 4.7.4 not cause any damage, pollution or other contamination to the Relevant Site (and will fully remediate and clean up any damage, pollution or other contamination which it does (whether accidentally, negligently or otherwise) cause to the Relevant Site);
- 4.7.5 not bring onto, or store at, the Relevant Site any hazardous or flammable substances, without the prior consent of the Supplier (save that flammable liquids properly contained in the Customer Rolling Stock by design – e.g. gas oil, hydraulic oil or gearbox oil – shall not be subject to this restriction); and
- 4.7.6 otherwise comply with all applicable Site-Specific Conditions.

#### 4.8 Collection of Customer Rolling Stock at end of Storage Period

- 4.8.1 Upon termination or expiry of the Storage Period, the Customer shall (subject to clause 10.9 (*Lien*) and clause 4.8.3 below) remove the Customer Rolling Stock (and any other Customer property) from the Relevant Site in accordance with clause 4.8.2 below.
- 4.8.2 For the purposes of clause 4.8.1 above, the Customer shall (subject to clause 10.9 (*Lien*)) be required to arrange the collection and removal of the Customer Rolling Stock (and any other Customer property) from the Relevant Site as follows:
  - (a) where the Storage Period is expiring by effluxion of time: on the date of such expiry;
  - (b) where the Storage Period has been voluntarily terminated by either party, in accordance with clause 10.1: on the date of such termination (as notified in advance, in accordance with that clause);
  - (c) where the Storage Period has had to be terminated under clause 10.2, in response to any action taken or decisions imposed by the relevant site owner/manager: on the date such termination takes effect;
  - (d) where the Storage Period has been terminated by the Customer under clause 10.4, in response to a

Supplier Event of Default: within ten (10) days of the date of such termination; and

- (e) where the Storage Period has been terminated by the Supplier under clause 10.7, in response to a Customer Event of Default: on the date such termination takes effect.

4.8.3 In circumstances where the Supplier is exercising its rights under clause 10.9 (*Lien*) to assert a possessory lien over the Customer Rolling Stock (or other Customer property) pending satisfaction of any outstanding, overdue debts under the Storage Contract in question, then the Customer shall arrange the collection and removal of the Customer Rolling Stock (and any other Customer property) from the Relevant Site on the date on which the lien is lifted, by final payment of the relevant outstanding, overdue sums (and not before).

4.8.4 Should the Customer fail to arrange the collection and removal of the Customer Rolling Stock (and any other Customer property) from the Relevant Site within the applicable timescale set out in clause 4.8.2 or (as the case may be) clause 4.8.3 above, then the Supplier shall be entitled to move such Fleet Vehicle:

- (a) to another part of the Relevant Site; or  
(b) to different premises of the Supplier; or  
(c) to premises of another responsible person, in which case the Customer shall reimburse the Supplier for all associated costs involved in such a move,

and in all such cases:

- (i) the Supplier shall cease to have any liability to the Customer in respect of the ongoing storage of such Customer Rolling Stock, and shall have no further obligation to perform any relevant Warm Storage Services;  
(ii) all such movements of the Customer Rolling Stock shall be undertaken at the sole and exclusive risk of the Customer; and  
(iii) for each day by which the Customer is late in collecting and removing any Customer Rolling Stock (or other property), the Storage Price shall continue to accrue and be payable, together with a mark-up of twenty per cent (20%), which the Supplier shall be entitled to invoice and demand payment, prior to releasing the Customer Rolling Stock into the Customer's possession.

4.8.5 If the Supplier has moved any Customer Rolling Stock to different premises in accordance with sub-clause 4.8.4, the Supplier shall procure the return of such Customer Rolling Stock to the Relevant Site for collection by the Customer within a reasonable period of receiving notice from the Customer that it is now ready to collect such Customer Rolling Stock.

4.8.6 The Customer shall reimburse the Supplier for all associated costs involved in complying with paragraph 4.8.5.

## 5. RELEVANT SITES

### 5.1 Supplier's right to grant access

The Supplier shall, in entering into any given Storage Contract, ensure that it has in place all such rights, permissions and consents as may be required from any owner or manager of the

Relevant Site, to enter into and perform such Storage Contract, and to grant any applicable rights to the Customer thereunder.

### 5.2 Settlement of costs under superior access arrangements

As between the parties, the Supplier shall be independently responsible for the settlement of any access charges levied on it by the owner or manager of the Relevant Site, under any superior lease or other access arrangements, and the Supplier shall not seek or be entitled to any separate recovery of such sums from the Customer, beyond the extent to which such overheads have been factored into the Supplier's pricing of the relevant Storage Price and (where applicable) Maintenance Price.

### 5.3 Site infrastructure

As between the parties, the Supplier shall be responsible for:

- 5.3.1 ensuring that the railway infrastructure within the Relevant Site is inspected and maintained at appropriate intervals by a recognised and certificated railway maintainer; and  
5.3.2 undertaking or procuring the performance of any relevant remedial works that have been recommended or instructed by the maintainer.

Should the Customer identify any irregularities in the railway infrastructure that require remedial attention, however, then it shall promptly bring the matter to the attention of the Supplier.

### 5.4 Site security

The security arrangements in place at each Relevant Site are as described in the corresponding Site-Specific Conditions.

## 6. WARM STORAGE SERVICES

6.1 Where the Commercial Particulars for any given Storage Contract provide for the Supplier's provision of Warm Storage Services, the Supplier shall:

- 6.1.1 perform such Warm Storage Services at the frequencies and otherwise in accordance with the instructions contained in the Warm Storage Specification;  
6.1.2 perform such Warm Storage Services with the appropriate level of skill and care to be expected of a properly skilled and experienced supplier of such services;  
6.1.3 use only such personnel as are suitably skilled, experienced and qualified to provide such Warm Storage Services; and  
6.1.4 observe all relevant steps and precautions laid out in any applicable method statements and/or risk assessments in place at the Relevant Site.

### 6.2 Warm Storage Specification

Where Warm Storage Services are to be provided by the Supplier:

- 6.2.1 the Customer shall (as between the parties) be solely and exclusively responsible for the content, appropriateness and adequacy of the Warm Storage Specification, and its provision to the Supplier; and  
6.2.2 the Supplier shall:  
(a) have no responsibility for checking or approving the content of the Warm Storage Specification, or otherwise endorsing its appropriateness or adequacy;

- (b) have no liability to the Customer or any Relevant Third Party for any loss, damage or degradation of the Customer Rolling Stock resulting from any inadequacy of the Warm Storage Specification; and
- (c) not be responsible for performing any work that is not expressly required by the Warm Storage Specification.

### 6.3 Records

Where Warm Storage Services are provided by the Supplier, the Customer shall – unless otherwise specified in the Commercial Particulars – remain responsible for any associated updating of the Customer Rolling Stock's maintenance and technical records.

To the extent the Customer will require any information from the Supplier, in these regards, then the Customer's relevant information provision requirements are to be recorded in the Commercial Particulars.

## 7. PRICE, PURCHASE ORDERS, INVOICING AND TERMS OF PAYMENT

### 7.1 Storage Price and Maintenance Price

7.1.1 The Storage Price and, where applicable, any Maintenance Price shall be as set out in the Commercial Particulars applicable to the Storage Contract in question.

7.1.2 Storage Prices and Maintenance Prices shall all be quoted as exclusive of VAT. In the event that VAT is or becomes chargeable on the relevant supply in question, then this shall be invoiced and payable in addition, at the prevailing rate in force on the date of invoice.

### 7.2 Price adjustments

#### 7.2.1 Price increases under Supplier's access arrangements

If the owner/manager of any Relevant Site has, and exercises, any rights to increase the rent, access fees or other costs payable by the Supplier under the terms of its superior access arrangements (including e.g. utilities or the use of on-site equipment, facilities etc.), then:

- (a) the Customer acknowledges that the Supplier may be unable to continue providing the relevant Storage Services at the Storage Price and/or Maintenance Price originally contracted for;
- (b) the Supplier shall promptly notify the Customer if such a situation arises, and shall provide the Customer with a fresh quote for the revised Storage Price and/or Maintenance Price that it would (in light of the increased overheads being imposed on it) need to begin levying, in order to continue providing the relevant Storage Services for the balance of the Storage Period;
- (c) the parties shall discuss the matter in good faith and either:
  - (i) where agreement is reached, any uplift to the Storage Price and/or Maintenance Price payable by the Customer (and the date from which such new pricing is to apply) shall be recorded under the terms of a Variation, pursuant to clause 9; or
  - (ii) where agreement cannot be reached, either party shall be entitled to trigger a voluntary termination of the Storage Contract, in accordance with clause 10.1.

#### 7.2.2 Indexation

The Storage Prices and Maintenance Prices payable under any Storage Contract shall be subject to annual indexation, on the basis described in the relevant Commercial Particulars.

### 7.3 Purchase Orders

7.3.1 Where a given Customer's accounts payable department employs a 'purchase order' system (or similar), as an administrative/governance process for the approval and validation of invoices submitted, then:

- (a) the Customer undertakes, in a timely manner, to furnish the Supplier with the appropriate purchase order(s)/purchase order number(s) required, to enable the Supplier to submit its invoice(s) in respect of relevant Storage Services, in line with the agreed Invoicing Periodicity; and
- (b) should the Supplier consider such steps to be prudent or warranted (e.g. to mitigate the risk of delay in its receipt of the corresponding purchase order(s)):
  - (i) the Supplier shall be entitled to insist upon the provision of adequate purchase order coverage by the Customer, in advance; and
  - (ii) where so requested, the Customer shall provide the Supplier with such purchase order coverage.

For the avoidance of doubt, however, the Supplier shall only raise invoices against such purchase orders in accordance with the agreed Invoicing Periodicity.

7.3.2 Notwithstanding clause 7.3.1 above, the Customer – by entering into the relevant Storage Contract – expressly acknowledges and agrees that the Supplier's contractual entitlement to issue invoices (and to have them settled in accordance with clause 7.5 below), is in no way contingent upon the Customer having first provided a corresponding purchase order (which the Customer acknowledges to be merely an internal process, that has no contractual implications for the Supplier's rights under any Storage Contract).

7.3.3 As such, once the Supplier has issued its invoice (in the appropriate amount) for any Accrued WIP, then the Customer shall be obliged to settle such invoice in accordance with clause 7.5, irrespective of whether the Customer had first provided a purchase order for such amounts.

### 7.4 Invoicing

7.4.1 The Supplier shall be entitled to submit to the Customer its invoices in respect of any Accrued WIP in accordance with the agreed Invoicing Periodicity, and promptly following the end of each Invoicing Period.

7.4.2 Invoices shall provide, or be accompanied by, a reasonable description of the Storage Services provided, and to which such invoice relates, and the resulting calculation of that Invoicing Period's Accrued WIP.

7.4.3 In certain circumstances, however (for instance if it has any reasonable doubt as to the creditworthiness of the Customer, or where such Customer has any history of late or non-payment, or failure to provide purchase orders), the Supplier may require the Customer to place monies on account, in anticipation of the Supplier's performance of the Storage Services.

**7.5 Payment terms**

- 7.5.1 Unless stated otherwise in the relevant Commercial Particulars, the Customer shall make settlement of the Supplier’s invoices within thirty (30) days of the invoice date.
- 7.5.2 All remittances due to the Supplier shall be:
  - (a) paid in pounds sterling;
  - (b) transmitted to the Supplier’s relevant nominated bank account, as set out in the Commercial Particulars; and
  - (c) be settled by the Customer in full, without set-off, deduction or counterclaim in respect of any sum claimed by, or payable to, the Customer for any reason whatsoever.

**7.6 Late payment / non-payment**

- 7.6.1 If the Customer fails to settle in full any invoice (or make any other payment due to the Supplier under the terms of any Storage Contract) by its due date, then:
  - (a) the Supplier’s applicable rights and remedies under (without limitation):
    - (i) clause 10.7 (*Supplier’s right to suspend or terminate*); and
    - (ii) clause 10.9 (*Lien*), shall apply;
  - (b) all current invoices then in issue from the Supplier to the Customer shall immediately fall due for payment, without the need for prior formal notice; and
  - (c) the Customer shall become liable to the Supplier for:
    - (i) default interest, in accordance with the Late Payment of Commercial Debts (Interest) Act 1998, on all overdue amounts, calculated at eight percentage point per annum (8% p.a.) above the statutory interest rate published by the Bank of England, and
    - (ii) administration fees as follows:

Invoice Amount	Administration Fee
Up to £999.99	£40 per invoice
£1,000 - £9,999.99	£70 per invoice
Over £10,000.00	£100 per invoice

**8. RISK ALLOCATIONS, LIABILITIES AND INDEMNITIES**

**8.1 Storage at Customer’s sole and exclusive risk**

- 8.1.1 All Customer Rolling Stock shall be placed into storage under a Storage Contract at the Customer’s sole and exclusive risk, and the Supplier shall have no liability whatsoever in respect of any loss or damage (howsoever occasioned) to the Customer Rolling Stock, while the same is:
  - (a) in storage at the Relevant Site;
  - (b) being delivered to or collected from the Site Boundary;

- (c) being moved onto, around or away from the Relevant Site (whether by the Customer or the Supplier); or
- (d) having any Warm Storage Services performed thereon.

8.1.2 As between the parties, the Customer shall, throughout the Storage Period, be solely and exclusively responsible for effecting and maintaining any requisite all risks property insurances in respect of the Customer Rolling Stock (including such insurances as may be required by any Relevant Third Party).

8.1.3 Where the Customer Rolling Stock is not owned by the Customer itself, the Customer:

- (a) warrants and represents that it has obtained the informed consent and authority of all Relevant Third Parties to enter into the Storage Contract in question, on its stated terms (including all allocations of risk, and all limitations or exclusions of liability which are set out therein, on the part of the Supplier);
- (b) shall procure that the Supplier suffers no liability to any Relevant Third Party for any loss or damage to the Customer Rolling Stock (howsoever caused); and
- (c) shall fully and effectively indemnify the Supplier against any claims raised or asserted by or on behalf of any such Relevant Third Party.

**8.2 Customer acts/omissions at any Relevant Site**

The Customer shall additionally indemnify and hold the Supplier harmless against any liabilities suffered by or claimed against the Supplier in respect of:

- 8.2.1 any loss or damage to, or contamination of:
  - (a) the Relevant Site; and/or
  - (b) any property of the Supplier or a third party which is located at the Relevant Site; and/or
- 8.2.2 death or personal injury to any person, in each case, as a result of as a result of any breach of the Storage Contract, any negligent act or omission by the Customer, or any defect with the Customer Rolling Stock.

**8.3 Warm Storage Services**

For the avoidance of doubt, notwithstanding any provision of Warm Storage Services by the Supplier, the Customer shall remain solely and exclusively on risk for the condition, performance and safety of the Customer Rolling Stock, once it has left the Relevant Site, and the Customer shall alone be responsible for undertaking any fitness-to-run examinations, or other pre-service checks etc. as required under applicable laws and standards or for the purposes of the Customer’s safety management system.

**8.4 Other matters**

Notwithstanding anything express or implied to the contrary in these Terms & Conditions:

- 8.4.1 nothing in these Terms & Conditions shall apply to limit or exclude any party’s liability in respect of fraud, fraudulent misrepresentation or any other matter which cannot, under applicable law, be lawfully limited or excluded; and
- 8.4.2 the Supplier shall in no circumstances be liable for any consequential or indirect loss, which without limitation

to the generality of the foregoing shall be defined to include any loss of profit, loss of contracts, loss of savings, or loss of revenue.

#### 8.5 Reasonableness of Risk Profile

8.5.1 In this clause 8.5:

- (a) all exclusions and/or limitations of risk, on the part of the Supplier; and
  - (b) all provisions of a Storage Contract which apply to allocate responsibility for certain identified risks, as between the Customer and the Supplier,
- are collectively referred to as the **Risk Profile** for the Storage Contract in question.

8.5.2 By entering into any given Storage Contract, the Customer expressly acknowledges and agrees that:

- (a) it has been afforded all reasonable opportunity to review, take advice on and (if thought necessary) seek amendments or qualifications to, the terms applicable to that Storage Contract, including its embedded Risk Profile;
- (b) the Risk Profile has been calibrated with specific reference to the nature of the Storage Services being provided and the Storage Price/Maintenance Price being charged;
- (c) had the Customer sought to negotiate a higher level of risk assumption by the Supplier than is actually comprised in the Risk Profile, then the Supplier would have had to either:
  - (i) decline to enter into the Storage Contract altogether; or
  - (ii) increase its pricing, to compensate it for that additional assumption of risk; and
- (d) accordingly, in giving its Confirmation in connection with the Storage Contract in question, the Customer expressly acknowledges and agrees that:
  - (i) the Risk Profile is fair and reasonable in all the circumstances; and
  - (ii) it has, in the interests of securing the Supplier's services at the prices quoted, knowingly and willingly:
    - (A) assumed the risks and liabilities allocated to it under such Storage Contract; and
    - (B) accepted the relevant risk allocations, and all such limitations and/or exclusions that apply to the Supplier's liability under such Storage Contract.

#### 9. VARIATIONS

- 9.1 At the time of creating any Storage Contract, any desired amendments, supplements or qualifications to these Terms & Conditions must be agreed in writing as part of the relevant Commercial Particulars and shall only apply in the context of that Storage Contract (and not to any other Storage Contract which may then be in place, or later be put in place, between the two parties).
- 9.2 The Supplier's agreement to any such amendments, supplements or qualifications to these Terms & Conditions in the context of one Storage Contract shall not establish any precedent or course of dealings for the purposes of any future Storage Contract.

- 9.3 Once a Storage Contract is in force, no amendments thereto shall be valid or binding on either party, unless the same are agreed in writing and signed by the parties respective Representatives. Any such Variation must clearly identify the specific Storage Contract(s) to which the relevant amendments are intended to apply.

#### 10. SUSPENSION AND TERMINATION

##### 10.1 Voluntary termination

10.1.1 Either party shall be entitled voluntarily, and without cause, to terminate any given Storage Contract upon provision to the other of no less than the Minimum Required Notice for Voluntary Termination.

10.1.2 In the event of any such voluntary termination by either party:

- (a) the Supplier shall make available for collection by (or on behalf of) the Customer, all Customer Rolling Stock which is, at the time of the termination, in storage at the Relevant Site (and the Customer shall arrange such collection in accordance with clause 4.8 above);
  - (b) the Supplier shall remain entitled to raise a closing invoice in respect of:
    - (i) all Storage Services provided by the Supplier, under the relevant Storage Contract, up to the date of its termination; and/or
    - (ii) any other sums accrued and owing from the Customer to the Supplier under the relevant Storage Contract, up to the date of its termination,and the Customer shall remain obliged to settle such closing invoice in accordance with clause 7;
  - (c) the termination shall be without prejudice to any rights and/or remedies of the parties which have accrued under the relevant Storage Contract, up to the date of its termination; and
  - (d) save as described above, neither party shall have any other continuing obligation to the other, under the terminated Storage Contract,
- with the requirements under sub-clauses (a) to (d) above being the **Standard Demobilisation Arrangements**.

##### 10.2 Termination or suspension of access by site owner/manager

###### 10.2.1 Termination/expiry of Supplier's access rights

- (a) If, for any reason whatsoever, the Supplier's own rights to use and access the Relevant Site are to expire or be terminated (and will not be renewed) during any relevant Storage Period, then the Supplier shall promptly notify the Customer to this effect, and the parties shall liaise with a view to agreeing the appropriate course of action (which may need to include a precipitate termination of the relevant Storage Contract, in the event that the site owner/manager is demanding the removal of the Customer Rolling Stock).
- (b) The Customer acknowledges and agrees that its rights under any Storage Contract are subject and subordinate to the rights and interests of the relevant site owner/manager, and that any termination of the Supplier's rights of access to the Relevant Site will correspondingly:

- (i) prevent the Supplier from being able to continue providing Storage Services from that location; and
  - (ii) mean that the Storage Contract in question will need to be terminated.
- (c) In the event that a Storage Contract needs to be terminated, in any such situation, then the Standard Demobilisation Arrangements shall apply and each party shall comply therewith.

#### 10.2.2 Suspension of access rights

- (a) If, for any reason whatsoever, a relevant site owner/manager imposes any restrictions on, or temporarily denies, access to a Relevant Site, then the Supplier shall promptly notify the Customer to this effect, and the parties shall liaise with a view to agreeing the appropriate course of action.
- (b) While such restriction or denial of access may only be temporary – and may not require the physical removal of Customer Rolling Stock from the Relevant Site – the Customer nonetheless acknowledges that the Supplier may (for the duration of such restriction or denial of access) be unable to enter onto the Relevant Site so as to e.g. perform any relevant Warm Storage Services.
- (c) In such a scenario, the Supplier shall have no liability whatsoever, to the Customer or any Relevant Third Party, for:
  - (i) its inability to perform such Warm Storage Services; or
  - (ii) any wear, damage or degradation to the Customer Rolling Stock which results from the Warm Storage Services not being performed while such restriction or denial of access is in place.

#### 10.3 **Supplier Events of Default**

The following events shall constitute **Supplier Events of Default**, for the purposes of this clause 10:

- 10.3.1 the Supplier commits a material breach of its obligations under a Storage Contract which either:
  - (a) is incapable of remedy; or
  - (b) while capable of remedy, is not remedied within thirty (30) days of a notice from the Customer requiring such remedy;
- 10.3.2 an Insolvency Event occurs in respect of the Supplier; or
- 10.3.3 the Supplier ceases, or threatens to cease, to carry on all or a substantial part of its business.

#### 10.4 **Customer termination right**

If, in the context of any given Storage Contract, a Supplier Event of Default should occur, the Customer shall be entitled to serve notice on the Supplier to terminate that Storage Contract forthwith.

#### 10.5 **Consequences of termination for Supplier default**

If the Customer terminates any Storage Contract in accordance with clause 10.4 above, the Standard Demobilisation Arrangements shall apply and each party shall comply therewith.

#### 10.6 **Customer Events of Default**

The following events shall constitute **Customer Events of Default**, for the purposes of this clause 10:

- 10.6.1 non-payment by the Customer of any sum owing to the Supplier, by its due date for payment;
- 10.6.2 the Customer commits a material breach of its obligations under a Storage Contract which either:
  - (a) is incapable of remedy; or
  - (b) while capable of remedy, is not remedied within thirty (30) days of a notice from the Customer requiring such remedy;
- 10.6.3 an Insolvency Event occurs in respect of the Customer; or
- 10.6.4 the Customer ceases, or threatens to cease, to carry on all or a substantial part of its business.

#### 10.7 **Supplier's right to suspend or terminate**

- 10.7.1 If, in the context of any given Storage Contract, a Customer Event of Default should occur, the Supplier shall be entitled to serve notice on the Customer, either:
  - (a) temporarily suspending its performance under that Storage Contract; or
  - (b) to immediately terminate:
    - (i) that Storage Contract; and
    - (ii) any other subsisting Storage Contracts in place between it and the Customer.
- 10.7.2 Where the Supplier elects to serve notice temporarily suspending its performance under a given Storage Contract:
  - (a) it shall specify:
    - (i) the action required of the Customer to satisfactorily remedy the applicable Customer Event of Default, so as allow the suspension to be lifted; and
    - (ii) the timescale in which the Supplier requires such remedial action to be taken by the Customer before the matter is further escalated (including, if the Supplier thinks fit, by the service of a further notice to terminate the Storage Contract outright); and
  - (b) the Supplier shall have no liability whatsoever for any wear, damage or degradation to the Customer Rolling Stock which results from the Supplier suspending performance of any Warm Storage Services.

#### 10.8 **Consequences of termination for Customer default**

If the Supplier terminates any Storage Contract in accordance with clause 10.7 above:

- 10.8.1 the Supplier shall, subject to any exercise of its rights under clause 10.9 (*Lien*) below, make available for collection by (or on behalf of) the Customer, all Customer Rolling Stock which is, at the time of the termination, in storage at the Relevant Site (and the Customer shall promptly arrange such collection in accordance with clause 4.8 above);
- 10.8.2 the Supplier shall be entitled to invoice the Customer in respect of:

(a) all Storage Services provided by the Supplier, under the relevant Storage Contract, up to the date of its termination; and/or

(b) any other sums accrued and owing from the Customer to the Supplier under the relevant Storage Contract, up to the date of its termination,

and the Customer shall remain obliged to settle such closing invoice in accordance with clause 7;

10.8.3 pending the Customer's settlement of all sums due and owing to the Supplier under the Storage Contract in question, the Supplier shall be entitled to exercise its rights under clause 10.9 (*Lien*) below;

10.8.4 the termination shall be without prejudice to any rights and/or remedies of the parties which have accrued under the relevant Storage Contract, up to the date of its termination; and

10.8.5 save as described above, neither party shall have any other continuing obligation to the other, under the terminated Storage Contract.

## 10.9 Lien

10.9.1 The Supplier shall have a general possessory lien over the Customer Rolling Stock being stored under any Storage Contract entered into with the Customer in question.

10.9.2 If, at the time the Customer would otherwise be due to collect any Customer Rolling Stock (or other Customer property) from the Relevant Site in accordance with clause 4.8, there remain any amounts that are outstanding and overdue to the Supplier under any Storage Contract, then the Supplier shall be entitled to exercise such lien so as to deny the Customer access to the Relevant Site, and retain possession of the Customer Rolling Stock (or other Customer property) in question, until such time as the relevant outstanding and overdue sums have been settled in full.

10.9.3 The Supplier's lien shall merely permit the detention of the Customer Rolling Stock (or other Customer property) pending payment of the overdue sums and shall not confer on the Supplier any right of sale.

10.9.4 Where the Customer is up-to-date in its settlement of invoices, and the only amounts which remain owing have not yet fallen overdue for payment (i.e. the remaining invoices in issue are yet to mature), then the Supplier shall not exercise its lien under this clause 10.9.

## 11. ASSIGNMENT AND SUB-CONTRACTING

11.1 Subject to clause 11.2 below, neither party may assign or transfer any of its rights or obligations under any Storage Contract, in full or in part, without the prior written agreement of the other party, such agreement not to be unreasonably withheld or delayed.

11.2 The Supplier may assign or transfer all, or any part of, its rights and/or obligations under a Storage Contract to another ROG Company, without requiring the consent of the Customer. In such a scenario, the Customer shall co-operate with the Supplier in signing such relevant documentation as may reasonably be requested of it, to effect or perfect any such assignment or transfer.

11.3 The Supplier may sub-contract the performance of any Warm Storage Services, under a Storage Contract, to any appropriately skilled and certificated third party, provided always that the

Supplier remains primarily liable to the Customer for the performance of such Storage Contract.

## 12. CONFIDENTIALITY

12.1 The parties shall keep (and procure to be kept) secret and confidential all Confidential Information disclosed or obtained as a result of the relationship of the parties under the Storage Contract (including during its period of negotiation) and shall not use nor disclose the same, save for the purposes of the proper performance of the Contract or with the prior written consent of the other.

12.2 The obligations of confidentiality under clause 12.1 above do not extend to any Confidential Information which:

12.2.1 is or becomes generally available to the public other than as a result of a breach of this clause 12;

12.2.2 was in its possession, free from any obligations of confidentiality, prior to the Storage Contract being entered into;

12.2.3 the parties agree in writing may be disclosed;

12.2.4 is required to be disclosed under any applicable law, or by order of any court, governmental body or authority of competent jurisdiction.

12.3 Each party shall take appropriate steps to ensure compliance with this clause 12 by its Representatives, officers, employees and any sub-contractors.

## 13. NOTICES

13.1 Routine correspondence in relation to the day-to-day organisation, discussion and operation of a Storage Contract may proceed in such manner as the parties' Representatives think fit. However, more formal or legal notices under, or in connection with, any Storage Contract (e.g. notices of dispute or serious dissatisfaction; notices of termination or suspension etc.) shall be sent by letter or email to the nominated address details for the recipient party in question. Such notices are to be served in English, in writing, and shall be considered received as follows:

13.1.1 where sent by registered letter or postage, when it is delivered; and/or

13.1.2 where sent by email, when it is received in legible form to the nominated email account of the recipient.

13.2 In these regards, the respective contact details for each of the Supplier and the Customer shall (subject to any subsequent notification to the contrary) be as set out in the relevant Commercial Particulars.

## 14. FORCE MAJEURE

14.1 Neither party shall be liable to the other for a failure to perform its obligations in the event of an occurrence attributable to a Force Majeure Event. The Party that is unable to fulfil its obligations shall notify the other Party as soon as reasonably practicable and, where reasonably possible, shall provide an estimate as to the likely duration for which it will be affected by the Force Majeure Event in question.

14.2 For the purposes of this clause 14, a **Force Majeure Event** shall include:

14.2.1 any reasonably unforeseeable or unavoidable events such as natural disasters (e.g. flood, fire), riot, war, epidemic or any other circumstances outside the direct control of the affected parties; and

14.2.2 organised strikes or other industrial action taken by rail companies, infrastructure operators or others within the

rail sector and/or at sites which affect a party's reasonable ability to perform.

- 14.3 Where a Force Majeure Event occurs, each party shall nevertheless use all reasonable endeavours to fulfil its obligations to the other party, to mitigate the impact or duration of the Force Majeure Event and/or to find alternative ways of achieving their goals under the Storage Contract in question (where relevant, by considering possible Variations).

## 15. MISCELLANEOUS

### 15.1 Entire agreement

15.1.1 In the context of any given Storage Contract, these Terms & Conditions, together with the related Site-Specific Conditions and Commercial Particulars (and any subsequent Variations agreed in accordance with clause 9), shall constitute the entire agreement and understanding of the parties in respect of the subject matter addressed therein, and supersede any previous correspondence, heads of terms or agreements between the parties relating to such subject matter.

15.1.2 In giving its Confirmation in respect of any Storage Contract, the Customer acknowledges that such Storage Contract has not been entered into wholly or partly in reliance on, nor has the Customer been given, any warranty, statement, promise or representation by the Supplier, other than as expressly set out within that Storage Contract.

### 15.2 Exclusive remedies

The respective rights, remedies and liabilities of the parties, as set out in any given Storage Contract, shall comprise their sole and exclusive rights, remedies and liabilities arising out of or in connection with the subject matter of that Storage Contract and shall apply to the exclusion of any other rights, remedies or liabilities that might be available at law, custom and practice or otherwise, whether express or implied.

### 15.3 Severability

If any provision of any Storage Contract should be held to be, or become, void or otherwise unenforceable for any reason under applicable law, then such provision shall be deemed omitted from the Storage Contract in question, and the validity and/or enforceability of the remaining provisions of the Storage Contract shall not be in any way affected or prejudiced as a result of that omission.

### 15.4 No implied waivers

15.4.1 No right or remedy of either party under a Storage Contract shall be diminished, waived or extinguished by the granting of any indulgence, forbearance or extension of time granted by that party to the other, nor by any failure of, or delay in ascertaining or exercising any such rights or remedies.

15.4.2 Any waiver of any breach of a Storage Contract shall be in writing, and the waiver by either party of any breach of the Storage Contract shall not prevent the subsequent enforcement of that provision and shall not be deemed to be (or require) a waiver of any subsequent breach of that or any other provision.

### 15.5 Compliance with applicable laws

The parties shall comply with their obligations at law, including without limitation all applicable anti-bribery, anti-slavery, taxation and data protection legislation and regulation.

## 16. DISPUTE RESOLUTION

16.1 In the event of any dispute or difference arising between the parties under any given Storage Contract, which cannot be resolved between their Representatives at a project level, the matter will be escalated to the senior management or directors of the parties.

16.2 If the senior management or directors remain unable to resolve the matter to the parties' mutual satisfaction, the dispute may be referred for mediation or other process of alternative dispute resolution.

16.3 Notwithstanding the foregoing, neither party shall be prevented from referring a dispute to the courts of England.

## 17. GOVERNING LAW AND JURISDICTION

Each Storage Contract and all matters (including, without limitation, any contractual or non-contractual obligations) arising out of or in connection with a Storage Contract, its subject matter or formation, shall be governed by and construed in accordance with the laws of England.

**Schedule 1: Site-Specific Conditions**

**Part 1 – Crewe South Yard**

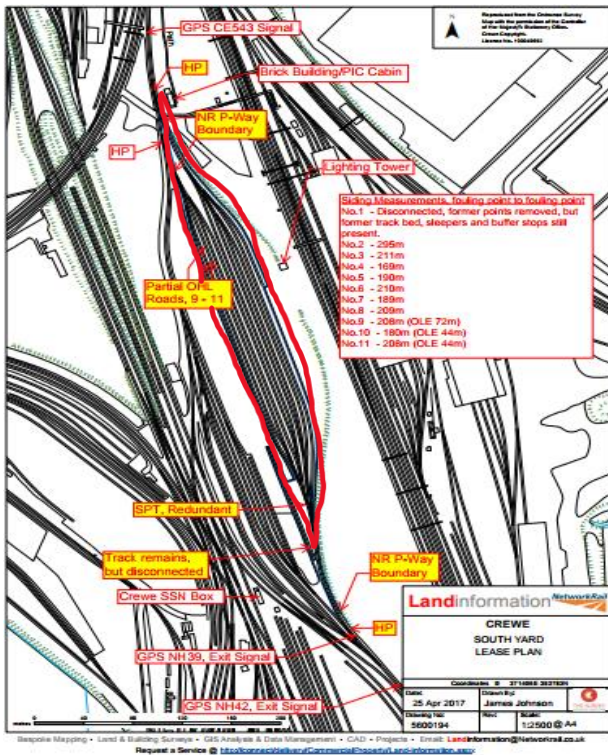
**1. THE SITE**

**1.1 Location**

Off Nantwich Road, Crewe, CW1 6NE

**1.2 Site description**

The Relevant Site at ‘Crewe South Yard’ is (approximately) as shown outlined in red on the plan below:



**1.3 Site Boundary**

The Site Boundary at the Crewe South Yard site (to and from which Customer Rolling Stock should be delivered/collected) is indicated by the applicable Network Rail boundary plates, at the site.

**2. SITE-SPECIFIC CONDITIONS**

**2.1 Site owner/manager (through whom Supplier obtains its superior access rights)**

Network Rail Infrastructure Limited (company number 02904587), whose registered office is at Waterloo General Office, London SE1 8SW.

**2.2 Site security**

The Crewe South Yard site comes with 24/7 manned security and yard patrols, provided by the Supplier.

The Customer will benefit from this security provision during the Storage Period but, for the avoidance of doubt, this is entirely without prejudice to clause 8.1 of the Terms & Conditions (*Storage at Customer’s sole and exclusive risk*), the wider Risk Profile embodied in the relevant Storage Contract, and the Customer’s acknowledgements at clause 8.5 of the Terms & Conditions (*Reasonableness of Risk Profile*).

**2.3 Hazardous/flammable goods**

No petrol or other flammable liquids/materials are to be stored or used at Crewe South Yard, except as permitted by the Supplier, in accordance with any requirements of the site owner/manager. In particular, the use or storage of acetylene is prohibited.

**Part 2 – Castle Donington**

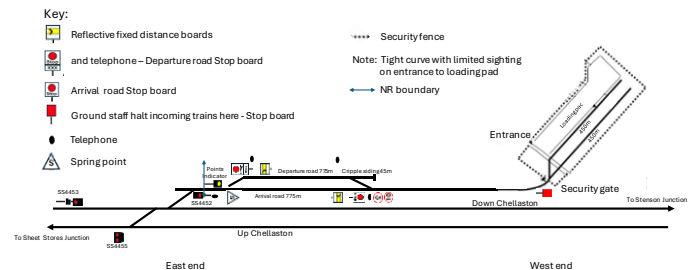
**1. THE SITE**

**1.1 Location**

Within the Rail Freight Terminal at West Meadow Rise, Castle Donington, Derby DE74 2HL

**1.2 Site description**

The layout of the track and sidings at Castle Donington is shown in the diagram below.



The Relevant Site for the purposes of any Storage Contract is represented by the two railway sidings marked within the dotted lines at the ‘West End’ of the site.

Access is via the marked arrival and departure roads that are independent of the ‘West End’ area.

**1.3 Site Boundary**

The Site Boundary at the Castle Donington site (to and from which Customer Rolling Stock should be delivered/collected) is indicated by the applicable Network Rail boundary plates, at the site.

**2. SITE-SPECIFIC CONDITIONS**

**2.1 Site owner/manager (through whom Supplier obtains its superior access rights)**

Marks & Spencer plc (or any affiliated member of its group).

**2.2 Site security**

The Castle Donington site comes with fencing and CCTV security, both of which are provided by the site owner/manager, rather than the Supplier.

The Customer will benefit from this security provision during the Storage Period but, for the avoidance of doubt, this is entirely without prejudice to clause 8.1 of the Terms & Conditions (*Storage at Customer’s sole and exclusive risk*), the wider Risk Profile embodied in the relevant Storage Contract, and the Customer’s acknowledgements at clause 8.5 of the Terms & Conditions (*Reasonableness of Risk Profile*).

Part 3 – MOD Bicester

1. THE SITE

1.1 Location

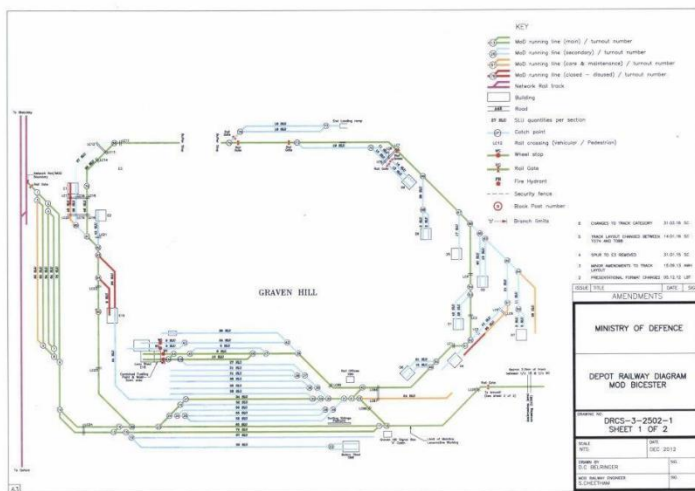
Building E16 (Loco Shed), Graven Hill, Bicester, Oxfordshire OX26 6JP, plus the sidings described in paragraph 1.2 below.

1.2 Site description

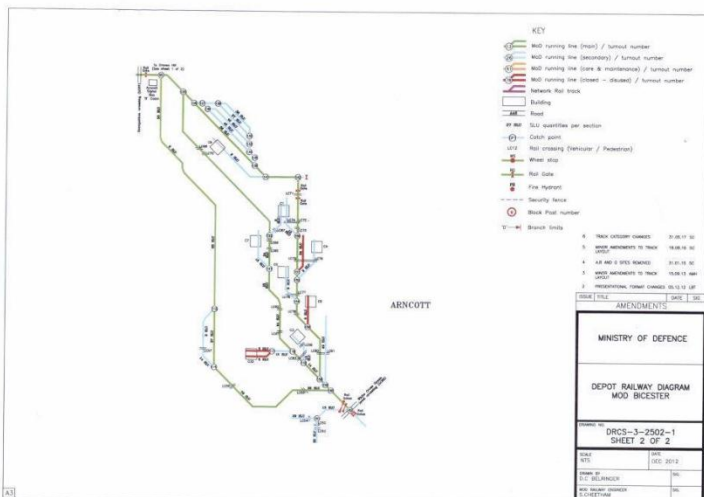
The MOD Bicester estate consists of two separate areas known as D/E Site (closest to the main line) and C Site (at Arncott), with an MOD rail line linking the two areas.

Within the D/E and C Sites, there is a total of 5,198 meters of siding space available for the storage of civilian rolling stock. This consists of three sets of sidings indicated on the plans and listed below.

Graven Hill



Arncott Sidings



5,198m of rail sidings over three locations within the MOD security perimeter:

D/E Site:	former Exchange Sidings	2,146m / 7,040ft
D/E Site:	part of Sorting Sidings	2,000m / 6,562ft
C Site:	Arncott Sidings	1,052m / 3,451ft

1.3 Site Boundary

The Site Boundary at the MOD Bicester site (to and from which Customer Rolling Stock should be delivered/collected) is indicated by the applicable Network Rail boundary plate, adjacent to the external perimeter gate at Graven Hill.

2. SITE-SPECIFIC CONDITIONS

2.1 Site owner/manager (through whom Supplier obtains its superior access rights)

The MOD Bicester site is owned by the UK Ministry of Defence and, within it, the Relevant Site to which the Supplier has rights of access is managed on the MOD's behalf by Kuehne + Nagel Limited (company number 1722216), whose registered office is at 1 Roundwood Avenue, Stockley Park, Uxbridge, UB11 1FG.

2.2 MOD Bicester as a military installation - implications

2.2.1 MOD Bicester is a military installation and, as such, many more Site-Specific Conditions are imposed, and many more rights are retained by the site owner/manager which, if exercised, could interfere with or frustrate the Supplier's ability to deliver the Storage Services in accordance with the parties' expressed intention under the Storage Contract.

2.2.2 In choosing to place Customer Rolling Stock into storage at the MOD Bicester site, the Customer is accepting those risks, and acknowledges that it shall have no recourse to the Supplier in respect of any issues arising from the exercise of retained rights or discretions by the Ministry of Defence or Kuehne + Nagel Limited, which are beyond the Supplier's control.

2.3 Security

2.3.1 Both the D/E Site and the C Site have their own security perimeter fences and all entrances (rail and road) are gated, with access to all areas being controlled by the MOD Guard Force.

2.3.2 The Customer will benefit from this security provision during the Storage Period but, for the avoidance of doubt, this is entirely without prejudice to clause 8.1 of the Terms & Conditions (*Storage at Customer's sole and exclusive risk*), the wider Risk Profile embodied in the relevant Storage Contract, and the Customer's acknowledgements at clause 8.5 of the Terms & Conditions (*Reasonableness of Risk Profile*).

2.3.3 The Customer shall comply with all notified safety and/or security requirements/instructions, while on site, and shall ensure that all of its personnel and nominated 3<sup>rd</sup> parties do likewise.

2.4 Access to the site

2.4.1 As an MOD facility, access to the site is restricted and, where granted, will be closely monitored and subject to strict protocols.

2.4.2 Persons arriving by road

- (a) If any Customer personnel or nominated 3<sup>rd</sup> parties are to attend the site by road, the Customer will need to provide the Supplier with certain required information no later than 48 hours prior to such personnel arriving, so that Kuehne + Nagel can complete the requisite Visitor Notification Form. Such information will include (without limitation):
  - (i) date and estimated time of arrival

- (ii) names of all persons attending
  - (iii) registration, make and colour of the vehicle(s) attending; and
  - (iv) list of any equipment that will be brought onto the site.
- (b) Attending personnel will be required to bring two types of photo identification and/or equivalent proof of identity documentation.
- (c) Proof of identification will be checked at the gate before admission is allowed onto the site and it shall be at the sole discretion of the guard staff at the gate whether or not admission will be granted. The Supplier shall have no liability in relation to any such decision.
- (d) The Customer acknowledges and agrees that its personnel may need to be escorted whilst onsite at MOD Bicester.

#### 2.4.3 Persons arriving by rail

- (a) If any Customer personnel are to attend the site by rail, the Customer will need to provide the Supplier with any required information in respect of the rail driver, no later than 24 hours prior to arrival by rail at the rail point of entry.
- (b) Personnel arriving by rail will need to meet the the relevant MOD or Keuhne + Nagel staff at the rail entry and/or exit gate and have at hand two types of photo identification and/or equivalent proof of identity documentation.
- (c) Proof of identification will be checked at the gate before admission is allowed onto the site and it shall be at the sole discretion of the guard staff at the gate whether or not admission will be granted. The Supplier shall have no liability in relation to any such decision.
- (d) The Customer acknowledges and agrees that its personnel may need to be escorted whilst onsite at MOD Bicester.

#### 2.4.4 Conduct on site

Whenever its personnel or nominated 3<sup>rd</sup> parties have been granted access to the site, the Customer shall ensure that they conduct any work in a safe manner, in accordance with all health and safety requirements (whether applicable at law or as instructed by MOD or Keuhne + Nagel staff at the site), and in such a manner as to not import any risk or liability to the MOD or Keuhne + Nagel at any time.

#### 2.5 Recourse to Keuhne + Nagel

In the event that:

- 2.5.1 any loss or damage is caused to the Customer Rolling Stock whilst in storage at MOD Bicester; and
- 2.5.2 the Supplier has, in connection with such loss or damage, any rights of recourse to Keuhne + Nagel under the terms of its access arrangements with them,

then the Supplier agrees, at the cost of the Customer, to pursue such rights and remedies for the benefit of the Customer, in such manner as the Customer may reasonably request.

#### 2.6 Pricing adjustments

2.6.1 With reference to clause 7.2.1 (*Price increases under Supplier's access arrangements*) of the Terms & Conditions, the Customer is made aware that, under the terms of the Supplier's access arrangements to the site, Keuhne + Nagel has the right to adjust its pricing to reflect:

- (a) any changes in Government legislation or regulations which have a material impact on their costs of providing services to the Supplier (including as regards employment or minimum wage legislation); and/or
- (b) any other cost inputs beyond their control.

The charges levied by Keuhne + Nagel are also subject to annual indexation in line with the percentage increase in RPI over the preceding 12-month period.

2.6.2 In such situations, the provisions of clause 7.2.1 (*Price increases under Supplier's access arrangements*) of the Terms & Conditions shall still apply, and without amendment, but the Customer's attention is simply drawn to the above provisions, as representing specific instances in which clause 7.2.1 of the Terms & Conditions may need to be applied, if MOD Bicester is the Relevant Site.

#### 2.7 Official Secrets Acts

The Customer shall, in connection with its use of and/or any access to the MOD Bicester site, comply with (and shall ensure that it's personnel and any nominated 3<sup>rd</sup> parties comply with) the provisions of the Official Secrets Acts 1911 to 1989.

#### 2.8 States of emergency

2.8.1 With reference to clause 10.2 (*Termination or suspension of access by site owner/manager*) of the Terms & Conditions, the Customer is made aware that the MOD Bicester site may be especially susceptible to the risk of situations arising in which the Supplier's access to the site may be terminated, suspended or subject to restrictions. Specific situations contemplated under the Supplier's contract with Keuhne + Nagel include where there is, or is perceived to be:

- (a) any material threat to the defence or security interests of the United Kingdom or the occurrence of a state of war, crisis, state of tension or other emergency (whether or not involving hostilities);
- (b) a request to the Ministry of Defence by a local authority, public body or statutory corporation for assistance in relation to the occurrence or possible occurrence of a major incident, crisis or natural disaster; and
- (c) a request by NATO, the EU or the United Nations for support or assistance in relation to international obligations.

2.8.2 In such situations, the provisions of clause 10.2 (*Termination or suspension of access by site owner/manager*) of the Terms & Conditions shall still apply, and without amendment, but the Customer's attention is simply drawn to the above provisions, as representing specific instances in which clause 10.2 of the Terms & Conditions may need to be applied, if MOD Bicester is the Relevant Site.

#### 2.9 Provision of services by Keuhne + Nagel

- 2.9.1 The Customer acknowledges that, where the Relevant Site is MOD Bicester, it may (given the restrictions and protocols which exist around access to the site and otherwise) be more efficient for the Supplier to sub-contract the provision of relevant Storage Services to Keuhne + Nagel, under the terms of the Supplier's contract with them.
- 2.9.2 Accordingly, the Customer gives its particular consent to such sub-contracting, for the purposes of clause 11.3 of the Terms & Conditions.
- 2.9.3 In such a situation, if so requested by the Supplier, the Customer shall, at its own cost, assist with the provision of any relevant on-site training to Keuhne + Nagel on the physical characteristics of the Customer Rolling Stock, to enable it to be moved safely on site. Where any Warm Storage Services have been contracted for, then the Customer shall additionally, and again at its own cost, assist as required with any necessary on-site training to enable such Warm Storage Services to be safely performed by Keuhne + Nagel.