

STANDARD TERMS AND CONDITIONS FOR THE SUPPLY OF FREIGHT SERVICES

1. DEFINITIONS AND INTERPRETATION

In these Conditions:

- 1.1 the following words and expressions have the following meanings and, in addition, any words and expressions defined in any Condition will have the same meaning when used in any other Condition:

"Applicable Law"	(a) any law and any legally binding rule, policy, guidance or recommendation issued by any governmental, statutory or regulatory body and any legally binding industry code of conduct or guideline; and (b) any non-binding rule, policy, guidance or recommendation issued by any governmental, statutory or regulatory body and any non-binding industry code of conduct or guideline, which, in each case, applies to one or each of us or relates to the subject matter or performance of the Contract and which is in force from time to time
"Business Day"	a day that is not a Saturday, Sunday or public or bank holiday in England and/or Wales
"Collection Location"	the collection location for the relevant Contracted Freight and Container(s) as set out in the Rail Booking
"Confirmation"	our written acceptance of the Rail Booking set out in our standard booking confirmation form or issued to you through RailX
"Container"	any 20 or 40 foot shipping container or other container used to carry Contracted Freight
"Contracted Freight"	the relevant goods to be transported via the Services as specified in the Rail Booking
"Control"	in relation to a person, the power (whether direct or indirect) to direct or cause the direction of its affairs, whether by means of holding shares, possessing voting power, exercising contractual powers or otherwise; and "Controls" and "Controlled" will be construed accordingly
"Eco2 Group Company"	Eco2Loco Limited (registered number 12473748) OR RailX Digital Solutions Limited (registered number 13856372) and Eco2Holdings Limited (registered number 14687216) together with any entity that Controls, is Controlled by or is under common Control with us
"Final Destination"	the final destination for the relevant Container(s) as set out in the Rail Booking, which it is acknowledged may or may not be the same destination as the Freight Delivery Location

“Freight Delivery Location”	the delivery location for the Contracted Freight as set out in the Rail Booking
“Good Industry Practice”	the level of skill, care, prudence, supervision, diligence, foresight, quality control and quality management which would (at the relevant time) be adopted by a professional supplier of services in the nature of the Services that complies with Road Haulage Association Ltd standards
“Hazardous Material”	any Contracted Freight that has hazardous or potentially hazardous properties or ingredients
“Liability”	liability arising out of or in connection with the Contract, whether in contract, tort, misrepresentation, restitution, under statute or otherwise, including any liability under an indemnity contained in the Contract and/or arising from a breach of, or a failure to perform or defect or delay in performance of, any of a party’s obligations under the Contract, in each case howsoever caused including if caused by negligence or if caused by a deliberate and/or repudiatory breach by that party
“Operational Hours”	the usual operational opening hours for the relevant Collection Location, Freight Delivery Location or Final Destination (as applicable)
“Operator”	any relevant third-party supplier with whom we have entered into an Operator Contract
“Operator Contract”	a sub-contract entered into by us and an Operator for the purposes of providing the Services
“Price”	the charges for the Services set out in the Rail Booking
“Rail Booking”	<p>your order for the supply of services from us, which may include:</p> <ul style="list-style-type: none"> (a) collection of the Contracted Freight and Container(s) from the Collection Location; (b) delivery of the Contracted Freight to the Freight Delivery Location; (c) collection of the Container(s) from the Freight Delivery Location; and (d) delivery of the Container(s) to the Freight Delivery Location or the Final Destination, <p>in each case as set out in your booking form or made through RailX</p>
“RailX”	our digital platform of ‘RailX’, or such successor digital platform as may be notified by us to you from time to time
“VAT”	(a) any value added tax imposed by the Value Added Tax Act 1994;

- (b) any tax imposed in compliance with the Council Directive of 28 November 2006 on the common system of value added tax (EC Directive 2006/112);
- (c) any other tax of a similar nature to that referred to in paragraphs (a) or (b) above, whether imposed in the United Kingdom or in a member state of the European Union in substitution for, or levied in addition to, any tax referred to in paragraphs (a) or (b) above; and
- (d) any other tax of a similar nature to that referred to in paragraphs (a), (b) or (c) above imposed in any country in the world

“we” or “us”

Eco2Loco Limited (registered number 12473748) whose registered office is at Rutland House, Minerva Business Park, Lynch Wood, Peterborough PE2 6PZ

OR RailX Digital Solutions Limited (registered number 13856372) whose registered office is at Rutland House, Minerva Business Park, Lynch Wood, Peterborough PE2 6PZ

“you”

the person named as the customer in the Rail Booking

- 1.2 all headings are for ease of reference only and will not affect the construction or interpretation of these Conditions;
- 1.3 references to a “person” include any individual, body corporate, association, partnership, firm, trust, organisation, joint venture, government, local or municipal authority, governmental or supra-governmental agency or department, state or agency of state or any other entity (in each case whether or not having separate legal personality);
- 1.4 references to any legislation or legislative provision will include any subordinate legislation made under it and will be construed as references to such legislation, legislative provision and/or subordinate legislation as modified, amended, extended, consolidated, re-enacted and/or replaced and in force from time to time;
- 1.5 any words following the words “include”, “includes”, “including” or any similar words or expressions will be construed without limitation and accordingly will not limit the meaning of the words preceding them;
- 1.6 references to “in writing” or “written” include facsimile and e-mail;
- 1.7 an obligation on a party to procure or ensure the performance or standing of another person will be construed as a primary obligation of that party; and
- 1.8 any obligation on a party not to do or omit to do anything includes an obligation not to allow (whether expressly or by a failure to take reasonable steps to prevent) that thing to be done or omitted to be done by any other person.

2. CONTRACT FORMATION

- 2.1 The Rail Booking constitutes an offer by you to purchase the services set out in the Rail Booking (“**Services**”) from us on these Conditions. A contract for the supply of Services by us to you on these Conditions (the “**Contract**”) will be formed when we accept the Rail Booking by issuing the Confirmation.

- 2.2 These Conditions are the only terms and conditions on which we will supply services to you and will apply to the exclusion of all other terms and conditions including any terms and conditions which you purport to apply under any purchase order, confirmation of order or similar document (whether or not such document is referred to in the Contract) and any terms and conditions which may otherwise be implied by trade, custom, practice or course of dealing.
- 2.3 Commencement of performance of the Services will be deemed conclusive evidence of your acceptance of these Conditions.

3. **RE-BOOKING AND CANCELLATION**

- 3.1 In the event that you need to change the trip date of the Contracted Freight or any Container as specified in the Contract, you will immediately notify us in writing, following which:
- 3.1.1 subject to **Conditions 3.1.2** and **3.1.3**, the trip date will be for the next available service;
 - 3.1.2 we will, as soon as reasonably practicable, seek to agree the changed date for the trip; and
 - 3.1.3 in the event that we cannot agree the changed date for the trip, we may cancel the Contract immediately in accordance with **Condition 3.3**.
- 3.2 In the event that you need to make any changes to the Contract following receipt of a Confirmation, other than set out in **Condition 3.1**, you will immediately notify us in writing, following which:
- 3.2.1 we will each, as soon as reasonably practicable, seek to agree the relevant changes to the Contract; and
 - 3.2.2 in the event that we cannot agree such changes within 30 days (or such other period as we may otherwise agree with each other) following receipt of your written notice served in accordance with **Condition 3.2**, you may cancel the Contract immediately by giving written notice to that effect to us, provided that you reimburse us in full for a sum equal to our reasonable costs incurred in providing the Services up until the date of receipt of this written notice of cancellation.
- 3.3 We may cancel the Contract immediately by giving written notice to that effect to you at any time prior to performance of the Services.

4. **RELATIONSHIP OF THE PARTIES**

- 4.1 We each acknowledge and agree that, notwithstanding anything to the contrary set out in the Contract, where the terms of the Contract place an obligation on us, we may procure that this is fulfilled by one or more Operators, and the relevant provisions of the Contract will be construed accordingly.
- 4.2 Any procurement of the performance of an obligation in accordance with **Condition 4.1** will not relieve us from our liabilities to you under the Contract.

5. **SERVICES**

- 5.1 We will, in performing the Services:
- 5.1.1 use reasonable care and skill;
 - 5.1.2 use Good Industry Practice;
 - 5.1.3 fulfil all requirements set out in the Rail Booking;

- 5.1.4 be responsible for risk of damage to or loss of the Contracted Freight from the start of loading at the Collection Location to completion of unloading at the Freight Delivery Location;
 - 5.1.5 be responsible for risk of damage to or loss of the Container(s) from the start of loading at the Collection Location to completion of unloading at the Final Destination;
 - 5.1.6 keep the Contracted Freight insured for its full price against damage or loss on an "all risks" basis with reputable insurers;
 - 5.1.7 ensure that no third party shall be able to access the Contracted Freight while in our possession and control;
 - 5.1.8 not alter or modify the Contracted Freight in any way;
 - 5.1.9 do nothing to prejudice the owner's title or rights to the Contracted Freight;
 - 5.1.10 ensure that RailX is available at all times, subject to any planned or unplanned maintenance or outages; and
 - 5.1.11 comply with all Applicable Law.
- 5.2 We will use reasonable endeavours to perform the Services on the estimated performance dates set out in the Rail Booking, but time for provision of the Services will not be of the essence of the Contract. Any performance dates given by us are estimates only.
- 5.3 You will, in respect of each Contract:
- 5.3.1 provide details of any special precautions for the carriage of the Contracted Freight required by the nature, weight or conditions of the Contracted Freight or by any Applicable Law;
 - 5.3.2 provide all documents and information reasonably requested by us to enable us to perform the Services in accordance with a Contract within a reasonable time following receipt of any such request for documents or information; and
 - 5.3.3 comply with all Applicable Law.
- 6. CARRIAGE OF GOODS**
- 6.1 We will deliver the:
- 6.1.1 Contracted Freight to you at the Freight Delivery Location, securely packed and labelled in compliance with any Applicable Law and in such condition as to be safe and without risk to health; and.
 - 6.1.2 Container(s) to you at the Final Destination.
- 6.2 You will provide us with a written note detailing:
- 6.2.1 the contents of each Container including details of the total weight and dimensions of each Container; and
 - 6.2.2 a list by name and description of any Hazardous Material in the Contracted Freight that will or are proposed to be transported by us in the provision of the Services, and thereafter information concerning any changes in such properties or ingredients. We will rely on the supply of such material from you in order to satisfy our own obligations under the Health and Safety at Work Act 1954 and any relevant Applicable Law.
- 6.3 In the event that:

6.3.1 we receive of a written notice in accordance with **Condition 6.2.2** that the Contracted Freight contains any Hazardous Material; or

6.3.2 we otherwise discover or reasonably believe that the Contracted Freight contains Hazardous Material,

we reserve the right to refuse to perform the Services in respect of such Contracted Freight.

6.4 We will be responsible for:

6.4.1 loading the Contracted Freight at the Collection Location;

6.4.2 unloading the Contracted Freight at the Freight Delivery Location;

6.4.3 where applicable, loading the Container(s) at the Freight Delivery Location; and

6.4.4 unloading the Container(s) at the Final Destination,

and, in each case, shall be liable for any loss or damage caused during loading or unloading save that we will not be liable for any loss or damage caused as a result of your negligent acts (or those of your staff) in assisting with unloading or in failing to pack the Contracted Freight or Container(s) securely.

6.5 We will work with you in a collaborative manner to provide you with regular updates after collection of the Contracted Freight from the Collection Location regarding the progress of the Services.

6.6 We will as soon as reasonably practicable after delivery of the Contracted Freight to the Freight Delivery Location or the Container(s) to the Final Destination:

6.6.1 send you confirmation of delivery of the Contracted Freight to the Freight Delivery Location;

6.6.2 send you confirmation of delivery of the Container(s) to the Final Destination; and

6.6.3 report to you any defective or missing items.

6.7 The updates, confirmations and reporting to be provided by us under **Conditions 6.5** and **6.6** may be provided via RailX, telephone call, e-mail or otherwise in writing.

6.8 In respect of defective items reported under **Condition 6.6.3**, we will at your written direction and expense, either destroy the items or return the items to you.

6.9 If you fail to take delivery of the Contracted Freight at the Freight Delivery Location or the Container(s) at the Final Destination, then we will be entitled to:

6.9.1 store or arrange for storage of the Contracted Freight and/or Container(s) (as applicable) until you accept delivery of them or they are disposed of under **Condition 6.9.2** (as applicable) and to take such action as we consider necessary to attempt to re-deliver the Contracted Freight to the Freight Delivery Location or the Container(s) to the Final Destination;

6.9.2 following written notice to you, treat the Contract as repudiated by you and dispose of the Contracted Freight and/or Container(s) (as applicable) in any way we see fit, including by sale to another person. If we sell any of the Contracted Freight or Container(s) under this **Condition 6.9.2** at a price which is less than the relevant Price plus any relevant packaging, insurance, carriage and delivery costs, we will be entitled to charge you for the shortfall; and

6.9.3 charge you for all costs and expenses which we incur under **Conditions 6.9.1** and **6.9.2**.

6.10 Where the Freight Delivery Location is different to the Final Destination, we will return the Container(s) to you at the Final Destination as soon as reasonably practicable after delivery of the relevant Contracted Freight to the Freight Delivery Location.

6.11 Nothing in this Contract will transfer or purport to transfer legal and beneficial ownership of the Contracted Freight or the Container(s).

7. **ACCESS TO PREMISES**

7.1 You will use all reasonable endeavours to procure that we and our employees, agents and representatives may, on prior reasonable notice, access any of the Collection Location, Freight Delivery Location or the Final Destination during Operational Hours for the purpose of performing the Services or otherwise delivering, collecting, removing or inspecting the Contracted Freight and/or Container(s).

7.2 We will ensure that when visiting the Collection Location, Freight Delivery Location or the Final Destination, we and our employees, agents and representatives will:

7.2.1 co-operate as far as may be reasonably necessary with your employees;

7.2.2 act in such a way as to avoid causing unreasonable or unnecessary disruption to your routine and procedures; and

7.2.3 comply with all rules and instructions you may issue from time to time relating to the use and security of the Collection Location, Freight Delivery Location or Final Destination (as applicable).

8. **RELIEF**

8.1 In the event of a breach by an Operator under the terms of an Operator Contract that may affect our ability to meet our obligations under this Contract:

8.1.1 we will promptly notify you;

8.1.2 we will be available to discuss such circumstances with you;

8.1.3 we will use reasonable endeavours to exercise our rights and remedies against the Operator in accordance with the Operator Contract, taking account of all your reasonable views; and

8.1.4 unless and until the Operator rectifies the relevant breach under the Operator Contract, we will, subject to having fully complied with our obligations pursuant to **clause 8.1.3**, not be in breach under this Contract to the extent that such breach results from the relevant breach by the Operator under the Operator Contract.

9. **INDEMNITY**

9.1 You will indemnify us against all losses (including all direct, indirect and consequential losses), liabilities, costs, damages and expenses that we do or will incur or suffer, all claims or proceedings made, brought or threatened against us by any person and all losses (including all direct, indirect and consequential losses), liabilities, costs (on a full indemnity basis), damages and expenses we do or will incur or suffer as a result of defending or settling any such actual or threatened claim or proceeding, in each case arising out of or in connection with any breach by you of any of your obligations under the Contract (including any failure or delay in performing, or negligent performance or non-performance of, any of those obligations).

9.2 We will indemnify you against all losses (including all direct, indirect and consequential losses), liabilities, costs, damages and expenses that you do or will incur or suffer, all claims or proceedings made, brought or threatened against you by any person and all losses (including all direct, indirect and consequential losses), liabilities, costs (on a full indemnity

basis), damages and expenses you do or will incur or suffer as a result of defending or settling any such actual or threatened claim or proceeding, in each case arising out of or in connection with any breach by us of any of our obligations under the Contract (including any failure or delay in performing, or negligent performance or non-performance of, any of those obligations).

10. **PRICE AND PAYMENT**

10.1 You will pay the Price to us in accordance with this **Condition 10**, which is inclusive of all costs and expenses incurred by us.

10.2 The consideration for any supply made under the Contract is exclusive of any VAT which is due in relation to such supply, which will be payable in addition to that consideration in the manner and at the rate prescribed by law from time to time, subject to receipt by the paying party of a valid VAT invoice.

10.3 We will be entitled to invoice you for the Price for the Services following completion of performance of the Services.

10.4 Subject to **Condition 10.5**, each invoice will be payable by you within 30 days following the date on which the invoice is received by you. We will send invoices to the address specified in the Rail Booking.

10.5 If you, on bona fide grounds, dispute any part of an amount invoiced by us (a "**Disputed Sum**"), you will be entitled to withhold payment of the Disputed Sum until the dispute is settled.

10.6 If any sum payable under the Contract is not paid on or before the due date for payment we will be entitled to charge you interest on that sum at 2% per annum above the base rate of the Bank of England from the due date until the date of payment (whether before or after judgment), such interest to accrue on a daily basis. Such interest will not be chargeable on any Disputed Sum, provided that if it is agreed or determined that part or all of the Disputed Sum is payable, interest will be chargeable on the relevant part of the Disputed Sum in accordance with this **Condition 10.6** but from the date on which payment of that sum is due in accordance with settlement of the dispute rather than from the date on which payment of the original invoice which included that sum was originally due. The parties agree that this **Condition 10.6** is a substantial remedy for late payment of any sum payable under the Contract, for the purposes of the Late Payment of Commercial Debts (Interest) Act 1998.

11. **COMPLIANCE WITH LAWS**

11.1 Each of us will:

11.1.1 in performing our obligations and exercising our rights under the Contract comply with all Applicable Law; and

11.1.2 maintain such records as are necessary from time to time to demonstrate our compliance with all Applicable Law.

12. **EXCLUSIONS AND LIMITATIONS OF LIABILITY**

Your attention is particularly drawn to this Condition.

12.1 Subject to **Condition 12.4**, our maximum aggregate Liability will be limited to a sum equal to the Price.

12.2 We will have no Liability to you for any:

12.2.1 loss of profit (whether direct, indirect or consequential);

- 12.2.2 loss of use, loss of revenue, loss of production or loss of business (in each case whether direct, indirect or consequential);
- 12.2.3 loss of goodwill, loss of reputation or loss of opportunity (in each case whether direct, indirect or consequential);
- 12.2.4 loss of anticipated savings or loss of margin (in each case whether direct, indirect or consequential);
- 12.2.5 loss of bargain (whether direct, indirect or consequential);
- 12.2.6 liability that you have to third parties (whether direct, indirect or consequential); or
- 12.2.7 indirect or consequential loss,

subject always to **Condition 12.4**.

- 12.3 We will not be in breach of the Contract or otherwise liable to you for any failure to perform or delay in performing our obligations under the Contract if such failure or delay is due to any event or circumstance beyond our reasonable control.
- 12.4 Nothing in the Contract will operate to exclude or restrict any Liability of a party:
 - 12.4.1 that cannot be excluded or restricted in the Contract in respect of death or personal injury resulting from negligence by operation of Section 2(1) Unfair Contract Terms Act 1977;
 - 12.4.2 for its fraud or fraudulent misrepresentation or fraud or fraudulent misrepresentation by a person for whom it is vicariously liable; or
 - 12.4.3 for any matter for which it is not permitted by law to exclude or limit, or to attempt to exclude or limit, its liability.
- 12.5 Any of our Liability which falls within **Condition 12.4** will not be taken into account in assessing whether the financial limit in **Condition 12.1** has been reached.

13. **TERMINATION**

- 13.1 If you commit a material breach of the Contract we may terminate the Contract immediately by giving written notice to that effect to you.
- 13.2 If you fail to make any payment of the Price due to us under the Contract within 30 days after the due date, we may terminate the Contract immediately by giving written notice to that effect to you.
- 13.3 We may terminate the Contract immediately by giving written notice to that effect to you if you:
 - 13.3.1 have a receiver of any kind, an administrator or provisional liquidator appointed;
 - 13.3.2 are subject to a notice of intention to appoint an administrator;
 - 13.3.3 propose or pass a resolution for your winding-up;
 - 13.3.4 have a winding up petition presented against you or a winding up order made by a court in respect of you;
 - 13.3.5 propose, make or are subject to any scheme of arrangement, voluntary arrangement or any other composition or arrangement with creditors;

- 13.3.6 take any step in respect of obtaining a moratorium under Part A1 of the Insolvency Act 1986;
- 13.3.7 cease to carry on business;
- 13.3.8 take any steps or actions or have any steps or actions taken in connection with any of these procedures in respect of you;
- 13.3.9 are the subject of anything analogous to the foregoing under the laws of any applicable jurisdiction;
- 13.3.10 are the subject of any proceeding in any Member State of the European Union which is capable of recognition under the EC Regulation on Insolvency Proceedings (EC 1346/2000) or the EU Regulation on Insolvency Proceedings (Recast) (EU 2015/848) as those regulations are enacted by an institution of the European Union and as amended from time to time; or
- 13.3.11 are the subject of an application for the recognition of a foreign insolvency proceeding under the Cross-Border Insolvency Regulations 2006 (SI 2006/1030),

and you will notify us immediately upon the occurrence of any such event or circumstance.

13.4 Following expiry or termination of the Contract:

- 13.4.1 any Conditions which expressly or impliedly continue to have effect after expiry or termination of the Contract will continue in force; and
- 13.4.2 all other rights and obligations will immediately cease without prejudice to any rights, obligations, claims (including claims for damages for breach) and liabilities which have accrued prior to the date of expiry or termination.

13.5 Within 20 Business Days after the date of expiry or termination of the Contract you will, subject to the exception set out in **Condition 13.6**:

- 13.5.1 if requested to do so, return to us all of our Confidential Information (including all copies and extracts) in your possession or control; and
- 13.5.2 cease to use our Confidential Information.

13.6 Each of us may retain any of the other's Confidential Information which we or you has to keep to comply with any Applicable Law or which we or you are required to retain for insurance, accounting or taxation purposes. The provisions of **Condition 14** will continue to apply to retained Confidential Information.

14. **CONFIDENTIALITY**

14.1 Both you and we will, subject to **Condition 14.2**:

- 14.1.1 only use the other's Confidential Information for the purpose of performing our respective obligations and exercising our respective rights under the Contract;
- 14.1.2 keep the other's Confidential Information secret, safe and secure; and
- 14.1.3 not disclose the other's Confidential Information to any other person.

14.2 Each of you and us may disclose the other's Confidential Information:

- 14.2.1 to the extent required by law, by an order of a court of competent jurisdiction or as required by any securities exchange, listing authority, governmental or regulatory authority; and

14.2.2 to those of our officers, directors, employees and professional advisers and, in the case of us alone, also to our agents and sub-contractors (including the Operator), who need access to that Confidential Information so that our respective obligations can be performed and our respective rights can be exercised under the Contract. If either you or we disclose the other's Confidential Information under this **Condition 14.2.2**, either you as the discloser or us where we are the discloser will procure that each person to whom that Confidential Information is disclosed will not do or omit to do anything which if done or omitted to be done by the relevant discloser would be a breach of this **Condition 14**.

14.3 For the purposes of this **Condition 14**, "**Confidential Information**" means the terms of the Contract and any information that relates to either you or us and which is disclosed to the other in connection with the Contract, but excluding information that:

14.3.1 is at the relevant time in the public domain (other than by virtue of a breach of this **Condition 14**); or

14.3.2 was received by the other from a third party who did not acquire it in confidence.

15. **NOTICE**

15.1 Any notice given under or in connection with the Contract will be marked for the attention of the specified representative and:

15.1.1 sent to the relevant party's address by pre-paid first-class post or mail delivery service providing proof of delivery;

15.1.2 delivered to or left at the relevant party's address (but not, in either case, by one of the methods set out in **Condition 15.1.1**); or

15.1.3 sent by e-mail to that party's e-mail address.

The address, e-mail address and representative for each of us will be as set out in the Contract and may be changed by either of us giving at least ten Business Days' notice in accordance with this **Condition 15**.

15.2 Any notice given in accordance with **Condition 15.1** will be deemed to have been served:

15.2.1 if given by first class post or mail delivery service as set out in **Condition 15.1.1**, at 9.00 a.m. on the second Business Day after the date of posting;

15.2.2 if given as set out in **Condition 15.1.2**, at the time the notice is delivered to or left at that party's address; and

15.2.3 if given as set out in **Condition 15.1.3**, at the time of sending the e-mail,

provided that if a notice is deemed to be served before 9.00am on a Business Day it will be deemed to be served at 9.00am on that Business Day and if it is deemed to be served on a day which is not a Business Day or after 5.00pm on a Business Day it will be deemed to be served at 9.00am on the immediately following Business Day.

16. **GENERAL**

16.1 The Contract constitutes the entire agreement between you and us and supersedes any prior agreement or arrangement in respect of its subject matter and:

16.1.1 neither you nor us has entered into the Contract in reliance upon, and neither you nor us will have any remedy in respect of, any misrepresentation, representation or statement (whether made by the other or any other person) which is not expressly set out in the Contract;

- 16.1.2 the only remedies available for any misrepresentation or breach of any representation or statement which was made prior to entry into the Contract and which is expressly set out in the Contract will be for breach of contract; and
- 16.1.3 nothing in this **Condition 16.1** will be interpreted or construed as limiting or excluding the liability of any person for fraud or fraudulent misrepresentation.
- 16.2 A delay in exercising or failure to exercise a right or remedy under or in connection with the Contract will not constitute a waiver of, or prevent or restrict future exercise of, that or any other right or remedy, nor will the single or partial exercise of a right or remedy prevent or restrict the further exercise of that or any other right or remedy. A waiver of any right, remedy, breach or default will only be valid if it is in writing and signed by the party giving it and only in the circumstances and for the purpose for which it was given and will not constitute a waiver of any other right, remedy, breach or default.
- 16.3 If any term of the Contract is found by any court or body or authority of competent jurisdiction to be illegal, unlawful, void or unenforceable, such term will be deemed to be severed from the Contract and this will not affect the remainder of the Contract which will continue in full force and effect.
- 16.4 Save as otherwise expressly provided in these Conditions, no variation to the Contract will be effective unless it is in writing and signed by a duly authorised representative on behalf of each of you and us.
- 16.5 Nothing in the Contract and no action taken by either you or us in connection with it or them will create a partnership or joint venture or relationship of employer and employee between you and us or give either of you or us authority to act as the agent of or in the name of or on behalf of the other or to bind the other or to hold itself out as being entitled to do so.
- 16.6 Each of you and us agrees that it is an independent contractor and is entering into the Contract as principal and not as agent for or for the benefit of any other person.
- 16.7 We and you may vary or rescind the Contract without the consent of our customers, officers, employees, agents and sub-contractors.
- 16.8 You and we do not intend that any term of the Contract will be enforceable under the Contracts (Rights of Third Parties) Act 1999 by any person.
- 16.9 Our rights and remedies set out in these Conditions are in addition to and not exclusive of any rights and remedies provided by law.
- 16.10 Subject to **Condition 16.11**, neither of us will be entitled to assign, transfer, charge, hold on trust for any person or deal in any other manner with any of our rights under this Contract unless we have obtained the prior written consent of the other party to do so (such consent not to be unreasonably withheld, delayed or made conditional).
- 16.11 We will be entitled to assign or transfer our interest under this Contract to any Eco2 Group Company.
- 16.12 Each of us will be entitled to sub-contract any of our respective obligations under these Conditions. We will each remain liable to each other under the terms of these Conditions notwithstanding any sub-contracting of obligations in accordance with this provision.
17. **GOVERNING LAW AND JURISDICTION**
- 17.1 The Contract and any non-contractual obligations arising out of or in connection with it will be governed by the law of England and Wales.
- 17.2 Subject to **Condition 17.3**, the courts of England and Wales have exclusive jurisdiction to determine any dispute arising out of or in connection with the Contract (including in relation to any non-contractual obligations).

- 17.3 Either party may seek interim injunctive relief or any other interim measure of protection in any court of competent jurisdiction.
- 17.4 Subject to **Condition 17.3**, each party waives any objection to, and agrees to submit to, the jurisdiction of the courts of England and Wales. Each party agrees that a judgment or order of any such court is binding upon it and may be enforced against it in the courts of any other jurisdiction.