

Trading Conditions

1. DEFINITIONS AND GENERAL CLAUSES

1.1 Unless the context otherwise requires:

“Company”	means SCHENKER (H.K.) LIMITED.
“Conditions”	means the terms and conditions embodied herein.
“Customer”	means any person at whose request or on whose behalf Company provides a Service.
"Dangerous goods"	includes any goods which are or may become dangerous, noxious, hazardous, inflammable, explosive, damaging or injurious and goods which harbour or encourage or likely to harbour or encourage vermin or other pests.
"Goods"	means all or any part of the goods (including any packing, containers or equipment supplied by Customer or Owner) in respect of which any Service is or is to be provided by Company or to which these Conditions otherwise relate.
“Instructions”	means statements of Customer's specific requirements, whether oral or in writing.
"Liabilities"	includes claims, demands, losses, damages, liabilities, fines, penalties, costs and expenses (including legal costs and expenses) of whatsoever nature.
"Logistics Services"	includes warehousing, distribution, stock control or management, order handling, receiving /delivering goods, preparing invoices and other documents, labelling, packing, repacking, consolidation, palletisation, and other processing of goods; and services ancillary or incidental thereto.
“Owner”	means the owner of the Goods and any other person who is or may become interested in them, and includes, without limitation, any shipper, consignee and other receiver of the Goods.
"Perishable goods"	means goods of a perishable nature and includes goods which require temperature control or goods with short shelf-life.
"Rights and Defences"	includes rights, remedies, defences, exemptions/limitations of liabilities,

liberties, immunities and benefits of whatsoever nature.

- "SDRs" means units of account used by the International Monetary Fund and known as Special Drawing Rights.
- "Services" means all or any business undertaken by Company for Customer including provision of any advice, information and services whatsoever (including without limitation forwarding or transportation (international, regional, cross-boarder or domestic), storage, loading, unloading, packing, unpacking, and other handling of goods and Logistics Services); and services ancillary or incidental thereto.
- "Transport Unit" includes any container, trailer, flat, tank, packing case, pallet and any other device used for and in connection with the carriage and/or consolidation of goods, and any equipment ancillary thereto.
- "Valuable goods" means goods of a valuable nature including without limitation bullion, bank notes, cash money, coins, travellers cheques, drafts, credit cards, documents of all kinds, computer data in any medium, precious stones, jewellery, antiques, works of art, and valuables of all kinds.

1.2 Unless the context otherwise requires, words importing the singular include the plural and vice versa; words importing a gender include every gender; references to persons include any individual, body corporate or unincorporated and any other entity. References to Clauses are to clauses of these Conditions. Clause headings are for convenience only and do not affect construction of these Conditions. References to "third party", "third party contractor" or "third party service provider" include any company which is a holding, subsidiary, related or affiliated company of Company.

1.3 Where Customer is itself not the Owner:

- (a) all representations, warranties, undertakings, agreements, obligations (including obligations to pay), liabilities, and indemnities expressed or implied to be made, given or assumed by Customer in or under these Conditions shall be deemed to be have been made, given and assumed by Customer jointly and severally with each and every person included in the definition of "Owner";
- (b) all and any Rights and Defences available to Company may be enforced or raised by it against Customer and Owner (and each and any of them); and
- (c) unless otherwise herein expressly provided, any agreement of Customer to indemnify Company shall be construed as an agreement to indemnity Company, its servants, agents and sub-contractors (and each and any of them).

1.4 If any legislation is compulsorily applicable to any Service, these Conditions shall as regards such Service be read as subject to such legislation and nothing in these Conditions shall be construed as

a surrender by Company of any of its Rights and Defences or as an increase of any of its responsibilities or liabilities under such legislation and if any part of these Conditions be repugnant to such legislation to any extent such part shall as regards such Services be void to that extent but no further.

- 1.5 No servant or agent of Company has authority to waive or vary any provision of these Conditions, unless such waiver or variation is in writing and signed by a director of Company.
- 1.6 Any right or remedy conferred on Company by these Conditions shall be in addition to and without prejudice to all other rights and remedies available to it (whether contained in these Conditions or under statute or otherwise available in law).
- 1.7 Rights and Defences of Company provided in these Conditions shall apply in any action against Company whether founded in contract, tort, bailment, trust or howsoever founded.
- 1.8 All notices required to be given to Company under these Conditions shall be in writing delivered to or sent by mail (postage prepaid) to Company's registered office for the time being in Hong Kong or such other address as Company may notify Customer in writing.

2. APPLICATION

- 2.1 Subject to Clauses 1.4 and 2.2 all and any Services, whether gratuitously or otherwise, are provided subject to these Conditions which are deemed to be incorporated in any agreement between Company and Customer.
- 2.2 Where Company issues its own bills of lading or waybills (air or sea) for carriage of Goods, or otherwise enters into any separate contract in writing for any Service, the terms and conditions ("Separate Terms") embodied in such bill of lading, waybill or separate contract shall be paramount and prevail in respect of the Service contracted for to the extent that these Conditions are inconsistent with the Separate Terms; where the provisions of these Conditions are not inconsistent with the Separate Terms those provisions shall continue to apply and be operative. (The signing or issue of a bill of lading or waybill by Company as agent of a third party service provider is not the issue by Company of its own bill of lading or waybill.)
- 2.3 Company is not a common service provider and (subject to Clauses 1.4 and 2.2) only deals with Goods and provides Services subject to these Conditions.

3. ROLE AND STATUS OF COMPANY

- 3.1 Company reserves to itself the discretion to provide any Service as a principal or to procure as an agent of Customer the provision of the Service by third party(ies). Company further reserves to itself the right to act as the agent or sub-contractor of any third party in respect of any contract, transaction, business or service relating to or affecting Customer or Owner.
- 3.2 Company acts as a principal in respect of a Service (to Customer) if and to the extent that one or more of the following is applicable:

- (a) the Service is performed by Company itself and the Goods are in its actual custody and control;
- (b) Clause 2.2 is applicable and under the Separate Terms Company contracts as a principal;
- (c) under any compulsorily applicable law Company is or is deemed to be providing the Service as a principal;
- (d) where Clause 4.5 is applicable.

3.3 Company shall not be taken to be acting as a principal in respect of any Service by reason only of any one or more of the following:

- (a) charge by Company of an inclusive price;
- (b) supply by Company of its owned or leased equipment and/or facilities;
- (c) the arrangement by Company for the Goods to be forwarded, carried, transported, stored or otherwise handled together or in consolidation with other goods.

3.4 Save as provided in Clause 3.2, all Services to Customer are provided by Company as Customer's agent. Without prejudice to the generality of the foregoing, Company always acts as an agent:

- (a) where Company procures the issue of a third party bill of lading or waybill (air or sea) or other document containing or evidencing a contract of carriage between a third party and Customer (whether or not the same is signed/issued by Company as agent of the third party);
- (b) when Company provides any Service in respect of or relating to customs requirements, taxes, licences, consular documents, certificates of origin, inspection, certificates and other services similar or incidental thereto; and
- (c) where Clause 11 or Clause 12(b) applies.

3.5 Customer hereby expressly consents that Company may act as the agent or sub-contractor of any third party in respect of any contract, transaction, business or service affecting Customer or Owner. Where Company acts as such agent or sub-contractor, Clause 6, without prejudice to Company's other Rights and Defences, shall apply.

4. COMPANY ACTING AS AGENT

4.1 When Company acts as the agent of Customer, Company shall be entitled, and Customer hereby expressly authorises Company, to:

- (a) enter into all and any contracts with any third party on any terms (whether in the name of

Customer or Company or otherwise); and

(b) do all and any other acts

on behalf of Customer as may be necessary or desirable to fulfil Customer's instructions.

4.2 Company shall be entitled to delegate its authority in whole or in part.

4.3 In entering into any contract or doing any act as referred to in Clause 4.1, Company does not itself make or purport to make any contract with Customer for provision of the Services by itself and acts solely on behalf of Customer in procuring the Services by third party(ies) so that the contractual relationship is between Customer and the third party(ies). Company, shall not be liable for any acts or omissions of the third party(ies) and Customer shall defend, indemnify and hold harmless Company from and against any liabilities which Company may incur arising from such contracts or acts.

4.4 Without prejudice to the generality of Clause 4.3, Company shall not be under any liability to Customer or Owner by reason of having entered into any contract on behalf of Customer, whereby the extent or degree of liability assumed by a third party is in any respect excluded or limited, unless such contract is entered into contrary to prior written Instructions given by Customer and accepted in writing by Company.

4.5 Unless otherwise requested by Customer in writing and agreed by Company in writing prior to or at the time of acceptance of Customer's Instructions, Customer shall be deemed to have waived all rights of enquiry of the terms and conditions and other particulars of contracts or arrangements entered into by Company pursuant to Clause 4.1. To the extent that Company has agreed to provide such information as aforesaid and has failed so to do within 28 days Company shall be deemed to have contracted with Customer as principal for the performance of the Service in respect of which Company has failed to provide the information requested.

5. COMPANY ACTING AS PRINCIPAL

5.1 Where and to the extent Company acts as a principal in respect of any Services and subject to Clause 1.4 and any Separate Terms (defined in Clause 2.2), these Conditions in general and this Clause 5 in particular shall apply.

5.2 Company will perform or in its own name procure the performance of the Service, and subject to terms hereof, accepts responsibility for loss of or damage to Goods occurring between the time when Company takes the Goods into its charge and the time when the Goods are delivered or deemed delivered by or for Company.

5.3 Company shall have full liberty to perform the Services itself, or to sub-contract on any terms whatsoever, the whole or any part of the Services. In respect of any Services or part Services sub-contracted, Company shall (subject to Clauses 1.4 and 5.4(a)) have full benefit of the Rights and Defences available to the sub-contractors (whether in contract or under statute or otherwise in law) as if such Rights and Defences were expressly incorporated herein for the benefit of

Company, and the liability of Company shall be limited to the amount recoverable by Company from the sub-contractor.

5.4 Company's liability for loss or damage shall be determined as follows:

(a) Notwithstanding any other provisions to the contrary in these Conditions, if (1) the stage of Service or carriage where the loss or damage occurred is known and (2) the international convention or national law (if any) hereinafter referred to is compulsorily applicable to determine the liability of Company, then Company's liability shall be so determined. The aforesaid international convention or national law is any international convention or national law which, in relation to the Service concerned:

- (i) cannot be departed from by private contract, to the detriment of the claimant; and
- (ii) would have applied if the claimant had made a separate and direct contract with Company in respect of that stage of Service or carriage where the loss or damage occurred and received as evidence thereof any particular document which must be issued if such international convention or national law shall apply.

AND Company shall be entitled to all Rights and Defences under or pursuant to such international convention or national law as well as all other Rights and Defences under these Conditions which are not repugnant to such international convention or national law.

(b) In any other case in accordance with Clause 18.

5.5 The applicable international conventions may include (a) in relation to carriage by sea, the Hague-Visby Rules and (b) in relation to carriage by air, the Warsaw Convention, Guadalajara Convention and Montreal Convention. Customer is hereby notified that international conventions do usually contain provisions limiting or exempting liability of carriers. In respect of carriage by air the following notice is hereby given:

"If the carriage involves an ultimate destination or stop in a country other than the country of departure, the Warsaw Convention may be applicable and that the Convention governs and in most cases limits the liability of carriers in respect of loss of or damage or delay to cargo."

5.6 "Warsaw Convention" means The Convention for the Unification of Certain Rules relating to International Carriage by Air signed at Warsaw on 12 October 1929 or that Convention as amended at The Hague, 28 September 1955, whichever may be applicable;

"The Guadalajara Convention" means the Convention supplementary to the Warsaw Convention, for the unification of certain rules relating to international carriage by air performed by a person other than the contracting carrier signed at Guadalajara on 18 September 1961;

"Montreal Convention" means the Convention for the Unification of Certain Rules for International Carriage by Air done at Montreal on 28 May 1999;

"Hague-Visby-Rules" means the provisions of the International Convention for the Unification of certain Rules of Law Relating to Bills of Lading signed at Brussels on 21 December 1979.

6. COMPANY AS AGENT OR SUB-CONTRACTOR OF THIRD PARTY

6.1 Where Company acts as agent or sub-contractor of a third party, then, without prejudice to Company's other rights or remedies, in respect of any act or omission committed by Company in the course of such agency or sub-contracting, Company (subject to Clause 1.4) shall be entitled (as against Customer, Owner or others) to all Rights and Defences available to such third party (or its agents or sub-contractor and whether contained in contract or under statute or otherwise available in law) as if such third party Rights and Defences were expressly incorporated in these Conditions for the benefit of Company and made applicable to such act or omission.

6.2 Clause 6.1 (without prejudice to its general applicability) shall apply where Company is agent or sub-contractor of a third party and on behalf or at the instructions of such third party makes or arranges to be made delivery (after discharge) or collection (before loading) of goods.

7. CUSTOMER'S WARRANTIES AND OBLIGATIONS

7.1 Customer expressly warrants that Customer is either Owner or authorised agent of Owner and that it is authorised to accept and accepts these Conditions not only for itself but also for and on behalf of Owner. Where Customer acts as agent, Customer also accepts liability under these Conditions to Company concurrently and jointly and severally with Owner as provided in Clause 1.3(a).

7.2 Customer warrants to Company as follows:

- (a) Instructions given to Company (or any person on its behalf) are lawful, reasonable, sufficient and executable.
- (b) The Goods are lawful goods and contain no contraband or prohibited items or any item which infringes or may infringe intellectual property or other rights of any other person.
- (c) When presented to Company (or any person on its behalf) the Goods are in such condition so as not to cause damage or injury or likely to cause damage or injury to property of Company or any other goods or any persons for any reason whatsoever.
- (d) Prior to presentation of Goods to Company (or any person on its behalf), Customer shall have notified Company in writing of any special nature of the Goods which require special or specific precaution or attention or handling.
- (e) Particulars of Goods given to Company (or any person on its behalf) are complete, accurate and include all data necessary to accomplish the required Services safely and effectively.
- (f) Without prejudice to (e) above, where Goods are for carriage to, through or from the

U.S.A., all information relating to the Goods is complete, accurate and true and in all respects in conformity and compliance with cargo declaration requirements of U.S. Customs regulations, and other related laws, rules and regulations.

- (g) Goods have been properly, securely and sufficiently packed and prepared (including proper labelling and marking) in compliance with any statutory regulations or official or recognised standards, and that such packing and preparation are appropriate to all operations affecting the Goods and in particular to withstand the ordinary risks of handling, storage and carriage.
- (h) Where Goods are received from Customer already packed in or on a Transport Unit not provided by Company, the:
 - (i) Goods have been properly and competently packed into/onto the Transport Unit;
 - (ii) Goods are suitable for handling or carriage in/on the Transport Unit being utilised; and
 - (iii) Transport Unit is in a suitable condition to carry the Goods packed therein or thereon onto the destination intended.
- (i) Where Company receives Goods packed by Customer in a Transport Unit provided by Company:
 - (i) prior to and at the time of packing, Customer has inspected the Transport Unit and has found the same to be in good repair and condition suitable for the packing of the Goods and for the carriage and other handling;
 - (ii) the Goods have been properly and competently loaded into/onto the Transport Unit;
 - (iii) the Goods are suitable for handling or carriage in/on the Transport Unit being utilised.
- (j) Customer has complied with all laws and regulations relating to the Goods as regards *inter alia* their nature, condition, packing, labelling, marking, description, handling, storage and carriage.
- (k) Customer is knowledgeable about its business and matters relating thereto and is able prepared and willing to use all reasonable endeavours to co-operate with Company for efficient execution of the Services.

7.3 A Customer for Logistics Services shall also be responsible to provide Company on a continuing basis with:

- (a) realistic rolling forecasts of cargo throughput at such intervals and with such information

as Company may reasonably require;

- (b) all necessary product data, including physical characteristics, packing details, pallet stacking method and any special logistics requirements; and
- (c) compatible computer links (including hardware and software) connecting to Company's computer system and to maintain the same at its own cost and expense.

8. CUSTOMER'S INDEMNITIES

- 8.1 Customer undertakes that no claim shall be made against any officer, servant, agent or sub-contractor of Company which imposes or seek to impose upon such person any liability in connection with any Services and/or Goods whether or not arising from negligence on the part of such person (except where such person is a third party providing a Service as an independent contractor to Customer through the agency of the Company, in which case Customer may proceed against such third party under of the terms of the contract procured on its behalf from such third party by Company acting as Customer's agent). Subject to the exception aforesaid if any such claim is made, Customer shall indemnify and save harmless Company and such person from and against all consequences thereof.
- 8.2 Without prejudice to Clause 8.1, every officer, servant, agent and (unless trading directly with Customer under its own conditions through the agency of Company) sub-contractor of Company shall have the benefit of Company's Rights and Defences under these Conditions as if the same were expressly included for their benefit; and in entering into this contract, Company, to the extent of such Rights and Defences, does so not only for itself but also as agent and trustee for such persons.
- 8.3 Customer shall indemnify and save harmless Company from and against:
- (a) all and any Liabilities arising as a result of Company acting in accordance with Customer's Instructions or arising from any breach by Customer of any warranty representation or undertaking herein contained or from any act or omission of Customer or Owner or their respective servants, agents or sub-contractors;
 - (b) all and any claims, costs and demands whatsoever and by whomsoever made or preferred in excess of the liability of Company under these Conditions; and
 - (c) all and any claims of a general average or salvage nature which may be made on Company, and Customer shall provide such security as may be required by Company in this connection on demand.
- 8.4 Advice and information, in whatever form given, is provided by Company (or its agent) for Customer only, Customer shall indemnify and save harmless Company from and against any Liabilities arising out of any other persons relying upon such advice or information. Except under special arrangements previously made in writing, advice and information not related to Instructions accepted by Company is provided gratuitously and without liability.

DANGEROUS, VALUABLE, PERISHABLE AND OTHER GOODS

- 9.1 Except pursuant to special arrangements previously agreed in writing by Company, Customer warrants that it shall not tender for Services any Dangerous, Valuable or Perishable goods; live animals or plants or other goods which require any special handling or attention whatsoever.
- 9.2 Should Customer nevertheless tender or caused to be tendered for Services any Goods in breach of Clause 9.1:
- (a) no liability howsoever arising will be accepted by Company in connection with such Goods;
 - (b) Customer shall be liable for all loss and damage whatsoever and howsoever caused thereby, and shall indemnify Company from and against all and any Liabilities arising in connection therewith; and
 - (c) such Goods may, without prior notice to Customer or any other person, be destroyed or disposed of or otherwise dealt with (without liability) at the sole discretion of Company or any other person in whose custody they may be at the relevant time.
- 9.3 If any Dangerous or Perishable Goods or live animals or plants are accepted for Services pursuant to arrangements previously made in writing, they may nevertheless be so destroyed or disposed of or otherwise dealt with (without liability) if, in the opinion of Company or of any person in whose custody the Goods may be in at the relevant time, they pose a risk to other goods, property, life or health.
- 9.4 If Company agrees to accept for Service any Goods which require temperature control, Customer warrants that it shall not tender any such Goods without having previously given written notice of their nature and particular temperature range to be maintained and, in the case of a temperature controlled Transport Unit packed by or on behalf of Customer, Customer further warrants that:
- (a) the Transport Unit has been properly pre-cooled or pre-heated as required;
 - (b) the Goods have been properly stuffed in the Transport Unit; and
 - (c) the Transport Unit thermostatic controls have been properly set.
- 9.5 If the requirements of Clause 9.4 are not complied with, Company shall not be liable for any loss or damage to or in relation to the Goods caused by such non-compliance.

10. QUOTATIONS AND CHARGES

- 10.1 Quotations are given for immediate acceptance and are subject to withdrawals or revisions. Unless otherwise agreed in writing by Company, Company may, notwithstanding any acceptance, revise quotations or charges with or without notice in the event of changes outside its control including without limitation changes in currency exchange rates, fuel costs, rates of freight, insurance

premiums or any other charges applicable to the Goods.

- 10.2 Charges relative to goods are usually quoted and charged on "chargeable weight" basis. Chargeable weight is the higher of actual gross weight or volume weight. Charges expressed by reference to "per kilogramme" or "per ton" refer to the higher of actual gross weight or volume weight. Details relating to computation of charges will be provided upon request.
- 10.3 Customs duties, taxes and other government charges are additional to charges quoted. Customer shall be liable for any duties, taxes, imposts, levies, deposits or outlays of any kind levied by any authorities at any port or place for or in connection with Goods, and for any payments, fines, expenses, loss or damage whatsoever incurred by Company its servants or agents or sub-contractors in connection therewith.
- 10.4 Charges for Services shall be deemed fully earned on receipt of Goods or commencement of Service by Company (whichever is the earlier) and shall be paid and non-refundable in any event notwithstanding any loss or damage of Goods or any claim or any other matter whatsoever.
- 10.5 Unless otherwise agreed by Company in writing, Company's invoices are due for payment immediately upon presentation. Invoices rendered shall be deemed to be accurate and complete and accepted by Customer unless written notice of dispute is received by Company within 14 days of the invoice date.
- 10.6 Customer shall pay to Company in cash, or as otherwise agreed, all sums immediately when due without deduction or deferment on account of any claim, dispute, counterclaim, set-off (equitable or otherwise), or any other matter whatsoever.
- 10.7 Customer shall, upon request, make immediate (advance) payment to Company to cover any money for which Customer is or may become liable under Clause 10.3. Company shall not be under any obligation to advance any money to Customer for the purpose.
- 10.8 On all amounts overdue, Company (without prejudice to its other rights or remedies) shall be entitled to interest at the rate of 2% per month during the period that such amounts are overdue.
- 10.9 Without prejudice to the generality of Clause 1.3 above, Company shall have the right to enforce any liability of the Customer under these Conditions or to recover any sums to be paid by Customer under these Conditions not only against or from Customer but also against or from Owner.
- 10.10 If any money owing to Company is not paid when due, Company, without prejudice to its other rights or remedies, may at any time thereafter by notice in writing to Customer (or without notice if Customer cannot reasonably be traced) and without liability whatsoever immediately, terminate:
 - (a) provision of all or any Services, whether or not such Services relate to the money overdue; and/or
 - (b) all or any credit facilities to Customer, whereupon all moneys owing by Customer not

otherwise due for payment shall become due and payable immediately.

- 10.11 No extension of time or other indulgence for payment purportedly given by or for Company shall be binding on Company unless in writing and signed by Company's authorised officers. If Company in its sole discretion agrees to the payment of any sum owing to it by instalments and Customer defaults in paying any such instalment, the entire balance outstanding at the time of default shall become due and payable immediately.
- 10.12 When Goods are accepted or dealt with upon instructions to collect freight, duties, charges or other expenses from the consignee or other person(s), Customer shall remain responsible for the same if they are not paid by such consignee or other person(s) immediately when due.
- 10.13 Company shall be entitled to retain and be paid all brokerages, commissions, allowances and other remunerations customarily retained by or paid to freight forwarders.

11. INSURANCE

- 11.1 No insurance will be arranged or effected except on express written Instructions given by Customer and accepted by Company in writing. All insurances arranged or effected by Company are subject to the usual exceptions and conditions of the policies of the insurance company or underwriters taking the risk. Company shall not be under any obligation to arrange or effect a separate insurance on each consignment but may declare it on any open or general policy. Should the insurers dispute their liability for any reason Customer shall have recourse against the insurers only and Company shall not be under any responsibility or liability whatsoever in relation thereto notwithstanding that the premium upon the policy may not be at the same rate as that charged by Company or paid to the Company by Customer.
- 11.2 Insofar as Company agrees to arrange or effect insurances, Company acts solely as agent of the Customer. Company does not warrant or undertake that any such insurance will be accepted by the insurance company or underwriter.

12. SPECIAL DELIVERY

- (a) Unless otherwise agreed by Company in writing, Company will not accept Instructions (and liability therefor) relating to delivery or release of Goods in special circumstances (such as, without limitation, against payment or against surrender of a particular document).
- (b) Where Company has to engage third party(ies) to effect such Instructions, Company shall always act as agent of Customer. Company shall in no circumstances be responsible for any act, omission, default, suspension, insolvency, negligence, or fault of such third party(ies), nor for any delay in remittance, loss in exchange, loss during transmission, loss in the course of collection or any other loss howsoever caused.
- (c) In any event, liability of Company shall not exceed the limit for mis-delivery of Goods as set out in Clause 18.4(a).

13. LIEN

- 13.1 Company shall have a particular and general lien and right of detention on all Goods (and documents relating thereto) and other property of Customer or Owner in its possession, custody or control for all sums due at any time from Customer and/or Owner to Company on any account whatsoever (whether or not relating to any Goods or Services or other goods or services). Storage charges shall continue to accrue on any Goods detained under this Clause 13.1.
- 13.2 Company shall be entitled on not less than 14 days prior written notice to Customer to sell, dispose of or otherwise deal with such Goods, documents or property (by auction or private treaty or otherwise) as agent for and at the risk and expense of Customer or Owner and apply the proceeds thereof in or towards payment of such indebtedness. Upon accounting to Customer for any balance remaining after payment of sums due and cost of sale and/or disposal and/or dealing, Company shall be discharged of any liability whatsoever in respect of such Goods, documents or property. In the event of shortfall, Customer shall pay the same on demand.

14. NO DUTY TO DECLARE/PRESERVE RIGHTS

- 14.1 Company shall not be obliged to make any declaration for the purpose of any statute, convention or contract as to the nature or value of any Goods or as to any special interest in delivery or to make any declaration as to specific stowage and storage requirements of any Goods, unless express written Instructions had been given by the Customer and accepted by Company in writing.
- 14.2 Where there is a choice of rates according to the extent or degree of liability assumed by carriers, warehousemen or other service providers, Goods will be forwarded, dealt with, etc., at Customer's risk and at such charges, including the lowest charges, as Company may at its discretion decide.
- 14.3 Statement or declaration of the value or nature of Goods for insurance, export, customs, documentary credit, invoicing or other purposes shall not constitute Instructions to Company to make any declaration for the purposes of Clause 14.1 or Clause 14.2.
- 14.4 Company shall have no obligation to give any notice of claim, or notify Customer or Owner or any other person to give any notice of claim, or otherwise take any action to preserve or protect any right or potential right which Customer or Owner or any other person may have against any third party.

15. LIBERTIES AND RIGHTS OF COMPANY

- 15.1 Subject to express written Instructions accepted by Company in writing, Company reserves to itself absolute discretion as to the means, routes, methods, and procedures to be followed in the provision of Services and the handling, storage, transportation or other dealings of the Goods.
- 15.2 If in the opinion of Company it is at any stage necessary or desirable in the Customer's interest to depart from Customer's instructions, Company may (but is not obliged to) do so and Customer hereby authorises such departure.

- 15.3 Company may at any time comply with orders or recommendations given by any Government authority or agency. Responsibility and liability of Company in respect of the Goods shall cease on delivery or other disposition of the Goods in accordance with such orders and/or recommendations.
- 15.4 Pending forwarding or delivery, Goods may be warehoused or otherwise held at any place(s) at the sole discretion of Company at the cost and risk of Customer.
- 15.5 Company may (but is not obliged to) open any package or Transport Unit at any time without notice to Customer to inspect, examine, weigh or measure the Goods. Any expense resulting therefrom shall be borne by Customer.

15.6 In the event that:

- (a) delivery of the Goods is not taken within the time and at the place as provided in Clause 16.1, and not less than 14 days written notice has been given to Customer (such notice to be dispensed with if Customer cannot reasonably be traced); or
- (b) in the opinion of Company (or person in whose custody the Goods are at the relevant time) the Goods are insufficiently addressed or marked; *or* are likely to deteriorate, decay, become worthless or incur charges in excess of their value; *or* may cause loss or damage to other goods or injury to persons; *or* the condition of the Goods are or will likely become such that they cannot safely or properly be serviced, carried, stored or otherwise handled; or
- (c) there is or Company reasonably considers that there is any breach by Customer of any of the warranties contain in Clause 7.2 and such breach is not remedied by Customer within 14 days (or such shorter time as circumstances may require) after being required so to do by Company by written notice to Customer (such notice to be dispensed with if Customer cannot reasonably be traced)

THEN in each and every of the aforesaid cases, Company may at any time (in its sole discretion and without liability and without notice (or further notice in the case of Clause 15.6(a) or Clause 15.6(c) to Customer or any other person) do or arrange to be done any one or more of the following (at the risk of Customer and Owner):

- (i) store the Goods or any part thereof ashore or afloat, under cover or in the open, at any place;
 - (ii) sell, dispose of or abandon the Goods or any part thereof (whether or not any action has been taken pursuant to (i) above).
- 15.7 Without prejudice to Company's other rights or remedies, upon such storage, sale, disposal or abandonment, the Goods (where Clause 15.6(b) or 15.6(c) is applicable) shall be deemed to be delivered to Customer or Owner or their nominees in proper performance of Services contracted

for and Company shall have no further liability in respect of the Goods (and where Clause 15.6(a) is applicable, the Goods would have been deemed delivered pursuant to Clause 16.1).

- 15.8 All charges and expenses arising in connection with the storage, dealing, handling, sale, disposal or abandonment of such Goods or in connection with any effort undertaken to preserve or save the Goods shall be paid by Customer on demand. Customer and Owner shall indemnify Company from and against all and any Liabilities incurred or suffered by Company by reason of any action taken in pursuance of Clause 15.6.
- 15.9 If at any time in the opinion of Company (or any person in whose custody the Goods are at the relevant time) performance of the Services contracted for is or is likely to be: (i) affected by any hinderance, risk, delay, difficulty or disadvantage of any kind (whatsoever and howsoever arising) occurring before or after commencement of the Service or conclusion of the contract for the Service; or (ii) prohibited under any laws or regulations, including but not limited to European Union laws, US laws or other national laws relating to anti-terrorism and trade embargos, Company may, without prior notice to Customer or any other person, and at its sole discretion, treat performance of the contract for Services terminated and place the Goods at Customer's disposal at any place which Company may reasonably deem safe and convenient, whereupon all responsibilities of Company for performance of the contract and all responsibilities in respect of the Goods shall cease absolutely and the Goods shall be deemed to have been duly delivered in proper performance of the Services (but without prejudice to any of its other rights or remedies). Company shall be entitled, notwithstanding any other provisions herein contained, to full charges for Services contracted for, and any additional charges and costs consequential to or resulting from the circumstances referred above.

16. DELIVERY

- 16.1 Customer or Owner shall take delivery of Goods (notwithstanding any loss or damage or any other matter whatsoever) within the time when and at the place where Company is entitled to deliver the same. If delivery is not so taken, then upon expiration of the time for taking delivery, the Goods shall be deemed to have been delivered to Customer or Owner or their nominees in proper performance of the Services contracted for.
- 16.2 If in accordance with applicable custom, practices, laws, regulations, Goods are handed over into the custody of any customs, port or other authority or any other person having authority at the port or place for delivery, such hand-over shall be deemed to be delivery of the Goods to Customer or Owner or their nominees in proper performance of the Services contracted for.
- 16.3 Delivery of the Goods to any person presenting any forged or fraudulent document purporting to be an original part of a Bill of Lading, Waybill (sea or air) or other original document entitling such person to delivery or possession of the Goods shall be deemed delivery to Customer or Owner or their nominees in proper performance of the Services contracted for, provided that the person delivering the Goods did not actually know that: (i) such document was forged or fraudulent and (ii) the person to whom the Goods were delivered or released in fact had no right or authority to take possession of the Goods.

- 16.4 Upon delivery or deemed delivery of the Goods, all liabilities of Company in respect of the Goods shall cease absolutely and immediately (but without prejudice to any of its rights hereunder including without limitation its right to any lien).
- 16.5 The rights of Company under this Clause 16 are in addition and without prejudice to its other rights including those under Clause 15.

17. EXCLUSION

Company (whether acting as agent or principal) shall not be liable for any loss or damage or any matter whatsoever if and to the extent the same was caused by any of the following:

- (a) any act or omission of Customer or Owner or any person (other than Company) acting on behalf of Customer or Owner;
- (b) compliance with Instructions given by or on behalf of Customer or Owner ;
- (c) insufficient packing, marking, labelling and/or numbering of the Goods unless Company had undertaken to carry out the same by itself;
- (d) handling, loading, stowing, unloading of Goods by Customer or Owner or any person (other than Company) on behalf of Customer or Owner;
- (e) inherent vice or defects of Goods;
- (f) riots, civil commotions, strikes, lock outs, stoppage or restraint of labour;
- (g) fire, flood, storm explosion or theft;
- (h) any cause or event which Company was unable to avoid and the consequences whereof Company was unable to prevent by the exercise of reasonable diligence;
- (i) any act or omission of Company the consequences of which it could not reasonably have foreseen;
- (j) compliance with the instructions of any person entitled to give them.

18. LIABILITY AND LIMITATION

Subject to Clause 1.4 and (where applicable) Clause 5.4, the following provisions shall apply as relate to the liability of Company.

- 18.1 Notwithstanding any negligence of Company, its servants, agents, sub-contractors or other persons for whom Company is responsible, Company shall not be responsible or liable for any damage, loss, non-delivery or mis-delivery of Goods, unless it is proved that such damage, loss, non-delivery or mis-delivery occurred whilst the Goods were in the actual custody of Company

and under its actual control and that the damage, loss, non-delivery or mis-delivery was due to the wilful neglect or wilful default of Company or its own servants.

- 18.2 Notwithstanding any negligence of Company, its servants, agents, sub-contractors or other persons for whom Company is responsible, Company shall not be liable for any non-compliance or mis-compliance with Instructions given to it unless it is proved that such non-compliance or mis-compliance was caused by the wilful neglect or wilful default of Company or its own servants.
- 18.3 Save as provided in Clause 18.1 or Clause 18.2, Company shall be under no liability whatsoever and howsoever arising and whether in respect of or in connection with any Goods or Services and whether or not there is negligence on the part of Company, its servants or agents or sub-contractors or other persons for whom Company is responsible.
- 18.4 Subject to Clauses 1.4, 5.4 and 18.7, in no case whatsoever shall the liability of the Company howsoever arising and notwithstanding any lack of explanation exceed:
- (a) In the case of any claim for loss of, damage to, mis-delivery or non-delivery of Goods; the lesser of:
 - (i) the value of the Goods lost, damaged, mis-delivered, or not delivered; or
 - (ii) a sum at the rate of two (2) SDRs per kilogramme of the gross weight of the Goods lost, damaged, mis-delivered, or not delivered.
 - (b) In the case of any claim for delay (the liability for which is not excluded by Clause 18.5); the limit set forth in Clause 18.5; and
 - (c) In the case of any other claim (not falling within Clauses 18.4(a) or 18.4(b)); an amount equal to the charges actually paid to Company by Customer for the Service (or part of the Service, as the care may be), the subject matter of the claim.

(The value of the Goods shall be the bona fide FOB invoice value plus (if paid) freight and insurance. If there is no bona fide invoice value of the Goods, the value of the Goods shall be such value as at the place and time they are delivered to Customer or person nominated by Customer, or at the place and time they should have been delivered, calculated by reference to the market value of goods of the same kind and quality.)

- 18.5 Company does not undertake that Services will be completed or the Goods (or documents relating thereto) will be delivered or made available within a particular time. Company shall not be liable for delay unless (and then only to the extent) required by compulsorily applicable law. If Company is so liable, it may invoke all Rights and Defences it has under such applicable law; and unless prohibited by such law, the provisions of Clause 18.1 and Clause 18.2 shall apply mutatis mutandis. Liability (if any) of Company for delay shall in no circumstances exceed an amount equal to the charges actually paid by Customer for Goods delayed or a sum at the rate two (2) SDRs per kilogramme of the gross weight of Goods delayed (whichever is the lower), provided that where the compulsorily applicable law provides for a higher limitation which cannot be varied

by private contract, that limitation shall apply.

18.6 Subject to Clauses 1.4 and (where applicable) 5.4, Company shall not in any event be under any liability whatsoever for:

- (a) any special, incidental, indirect, consequential or economic loss or damage (including without limitation loss of market, profit, revenue, business or goodwill) delay (subject to Clause 18.5) or deviation; or
- (b) any loss, damage or expense arising from or in any way connected with fire or theft or a consequence of fire or theft

in each case howsoever caused and whether or not resulting from any act, default or neglect of Company or its servants, agents, sub-contractors or other persons for whom Company is responsible.

18.7 By special arrangement agreed by Company in writing, Company may accept alternative limits of liability in excess of the limits set out in these Conditions if Customer agrees to pay and has paid Company's additional charges for accepting such increased liability. In that case, such alternative limits as agreed shall be substituted for the limits laid down in these Conditions. Details of Company's additional charges will be provided upon request.

19. NOTICE OF CLAIM AND TIME BAR

Subject to Clause 1.4 and (where applicable) Clause 5.4, the following shall apply in respect of any claim (howsoever caused and of whatsoever nature) against Company:

19.1 Any claim against Company must be made in writing and notified to Company within 10 current days from:

- (a) in the case of damage to Goods; the *date* of delivery of the Goods;
- (b) in the case of loss, non-delivery, mis-delivery or delay (if liability for delay is not excluded by Clause 18.5) of Goods; the *date* the Goods should have been delivered; and
- (c) in any other case; the *date* of the occurrence of the event giving rise to the claim.

Provided that if compulsorily applicable law or international convention provides for a shorter time for giving notice of claim, then, subject to reasonable time being given to allow Company to reserve its claims against its sub-contractors or other third party, such shorter time shall apply.

19.2 If no notice of claim is given within the times provided in Clause 19.1, no action shall lie against Company.

19.3 (Subject to Clauses 1.4 and 5.4) all rights of claim against Company shall be extinguished and Company discharged of all liability whatsoever, unless suit is brought in the proper forum and

notice thereof given to Company within 9 months from the applicable date specified to in Clause 19.1(a) or (b) or (c).

20. APPLICABLE LAW AND JURISDICTION

20.1 These Conditions and any Service or contract to which they apply shall be governed by and construed according to the laws of the Hong Kong Special Administrative Region.

20.2 Customer (for itself and for Owner) and Company hereby irrevocably submit to the exclusive jurisdiction of the Courts of the Hong Kong Special Administrative Region, Provided that Company may also bring any legal proceedings against Customer or Owner in any other Courts of competent jurisdiction, and proceedings by Company in any one or more jurisdictions shall not preclude legal proceedings by it in any other jurisdiction, whether concurrent or not.

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