

# FEDERATION OF MALAYSIAN FREIGHT FORWARDERS THE STANDARD TRADING CONDITIONS

## PART I DEFINITIONS AND APPLICATION

### Standard Trading Conditions for FMFF/AFFA

#### 1. (a) In these Conditions:

(i) "Applicability"

These conditions apply when they are incorporated, however this is made, in writing, orally or otherwise, into a contract by referring to the FMFF/AFFA Standard Trading Conditions for Logistics and Freight Forwarding services. Whenever such reference is made, the parties concerned agree that these Conditions shall supersede any additional terms of the contract which are in conflict with these Conditions.

(ii) FMFF means Federation of Malaysian Freight Forwarders / AFFA means ASEAN Federation of Forwarders Associations

(iii) AFFA Member means National Association who is the member of AFFA

(iv) "Authority" means a duly constituted legal or administrative person acting within its legal powers and exercising jurisdiction within any nation, state, municipality, port or airport and frontier posts.

(v) "Company" means a member of the National Freight Forwarders and/or Logistics Association which is the member of ASEAN Freight Forwarders Associations who provides any Services upon and subject to the provisions of these Conditions;

(vi) "Container" means freight container (including without limitation any container, flexitank, trailer, transportable tank, pallet or any article used to consolidate goods) which may carry unique identification numbers and markings, as well as any other equipment (including devices which permit its ready handling) forming part thereof or connected thereto; It also means the packaging such as a carton, case, box, bucket, drum, bin, bottle, bundle, or bag, that an item is packed and the goods shipped in.

(vii) "Customer" means any party at whose request or on whose behalf the Company provides any Services;

(viii) "Dangerous Goods" includes:

- a) Dangerous goods as defined in any relevant regulations, rules, such as IMDG Code or IATA DGR or any national law, legislation or decree in AFFA Member countries.
- b) Goods specified in the transport regulations for the carriage of dangerous goods including: Domestic Transport Laws in AFFA Member countries.
- c) Goods which are or may become of a dangerous, inflammable or radio-active character or damaging to itself or other property, or goods so dangerously packed, or goods likely to harbor or encourage vermin or other pests, or goods which owing to legal, administrative or other obstacles as to their carriage, discharge or otherwise may be detained or cause any other property or person to be detained;
- d) Empty receptacles which were previously used for the carriage of Dangerous Goods unless such receptacles have been rendered safe; and
- e) Goods which are considered to be dangerous or hazardous by any authority

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(ix) Domestic Transport Laws means any laws related to international carriage of goods by any mode of transportation issued by the government of AFFA Member Countries

(x) "Electronic" means the electronic message transfer from computer to computer of commercial or administrative transactions using agreed standard to structure the transaction or message data. In writing includes generated, sent, received or stored by electronic data interchange, telegram, telex, telefax or electronic mail, if the information is accessible so as to be able to be usable for subsequent reference.

(xi) "Goods" means the cargo in relation to which the services are provided by the Company and includes any container, packaging, pallet supplied by or on behalf of the Customer;

(xii) "Hague-Visby Rules" means the provisions of the International Convention for the unification of certain rules relating to bills of lading signed at Brussels on 25 August 1924, as amended by the Protocol made at Brussels on 23 February 1968;

(xiii) "Multimodal Transport Operator" shall have the same meaning as set out in Article 1, Item C of the Asean Framework Agreement on Multimodal Transport.

(xiv) "Owner" means the owner of the Goods and includes any other person who is or may be entitled to the goods.

(xv) "Services" means any business including but not limited to logistics service undertaken or any advice, information or activities provided by the Company;

(xvi) "Warsaw Convention" means the Convention for the Unification of Certain Rules relating to International Carriage by Air opened for signature at Warsaw on 12 October 1929, as amended by the Hague Protocol of 1955 and the Montreal Protocol of 1995.

(xvii) "Montreal Convention" means the (Convention for the Unification of Certain Rules for International Carriage by Air) which is a multilateral treaty adopted at a diplomatic meeting of ICAO Member states in 1999.

(xviii) "Conditions" means the provisions set out herein including the "Rules Governing Electronic Interchange"

**(b)** Where applicable, words importing the singular include the plural and vice versa; words importing a gender includes every gender and references to persons include bodies corporate and unincorporated.

**(c)** Clause headings are inserted for convenience of reference only and shall be ignored in the interpretation of these Conditions.

**(d)** Any reference to any statute shall be deemed also to refer to any statutory modification or re-enactment there of or any statutory instrument, order or regulation made there under or under such re-enactment.

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**2. (a)** Any services or activities provided by the Company, whether gratuitously or otherwise, shall be subject to these conditions which are deemed to be incorporated into any agreement or arrangement between the Company and its Customer, and which are also deemed to prevail over any conditions of contract of the Customer.

**(b)** In respect of any agreement or arrangement between the Company and its Customer for the provision of any Services to which these Conditions apply that is effected by means of Electronic Data Interchange, the provisions set out in the "Rules Governing Electronic Data Interchange" annexed to these Conditions shall, unless otherwise expressly agreed, apply and shall be deemed to form part of these Conditions.

**(c)** Without prejudice to Clause 2(a) above,

(i) the provisions of Part II hereunder shall apply to all Services provided by the Company whether as agent or principal;

(ii) the provisions of Part III shall apply only to the extent that the services are provided by the Company as agent. In the event of any inconsistencies between any provisions in Part III and those in Part II, the provisions in Part II shall apply to the extent that they are not inconsistent with those in Part IV.

**(d)** If any legislation is compulsorily applicable to any Services, these conditions shall as regard such services be read as subject to such legislation and nothing in these Conditions shall be construed as a surrender by the Company of any of its rights or immunities or as an increase of any of its responsibilities or liabilities under such legislation. If any part of these Conditions is repugnant to such legislation to any extent such part shall as regards such services be void to that extent but no further.

**(e)** Subject (d) above, where a "bill of lading" or "waybill" is issued by or on behalf of the Company and provides that the Company contracts as carrier, the provisions set out in such document shall be paramount in so far as such provisions are inconsistent with these Conditions.

**(f)** Every variation, cancellation or waiver of these Conditions or any part thereof must be in writing signed by an Executive Director/Authorised Person of the Company. Notice is hereby given that no other person has or will be given any authority whatsoever to agree to any variation, cancellation or waiver of these Conditions.

**3.** All services are provided by the Company as agents except in one or more of the following circumstances where the Company acts as principal:

(a) where the company performs any carriage, handling or storage of Goods but only to the extent that the carriage is performed by the company itself or its servants and the Goods are in the actual custody and control of the company or its servants;

(b) where the company contracts with its Customers as a Multimodal Transport Operator; or

(c) to the extent that the Company expressly agrees in writing to act as a principal

(d) where the company issues any transport documents

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### **4. Without prejudice to the generality of Clause 3,**

(a) the charging by the Company of an all-inclusive or one -package price for any services shall not in itself determine that the Company is acting as an agent or a principal in respect of such services;

(b) the supplying by the Company of their own or leased equipment and/or facilities, shall not in itself determine that the Company is acting as an agent or a principal in respect of such services;

(c) the Company acts as an agent where the Company procures the issue of a bill of lading or other document evidencing a contract of carriage between the parties, other than the Company, and the Customer or Owner; and

(d) the Company acts as an agent and never as a principal when providing Services in respect of or relating to customs requirements, taxes, licences, consular documents, certificates of origin, inspection, certificates and other services similar or incidental thereto

## **PART II GENERAL CONDITIONS**

### **Obligations of the Customer**

#### **5. Hindrance**

If at any time the Company's performance is or is likely to be effected by any hindrance or risk of any kind (including the conditions of the goods) not arising from any fault or neglect of the Company and which cannot be avoided by the exercise of reasonable endeavor, the Company may abandon the carriage of the goods under the respective conditions and, where reasonably possible, make the goods or any part of them available to the Customer at the place which the Company may deem safe and convenient, where upon delivery shall be deemed to have been made, and the responsibility of the Company in respect of such goods shall cease. In any event, the Company shall be entitled to the agreed remuneration under the contract and the Customer shall pay any additional costs resulting from the above-mentioned circumstances.

#### **6. Method and route of transportation**

The Company shall carry out his services according to the Customer's instructions as agreed. If the instructions are inaccurate or incomplete or not according to the contract, the Company may at the risk and expense of the Customer act as he deems fit Unless otherwise agreed, the Company may without notice to the Customer arrange to carry the goods on or under deck. Unless otherwise agreed, the Company may, upon reasonable efforts to inform, choose or substitute the means, route and procedure to be followed in the handling, stowage, storage and transportation of the goods.

**7.** The Customer warrants that he is either the Owner or the authorized agent of the Owner of the Goods, and that he is authorised to accept and is accepting these Conditions not only for himself but also as agent for and on behalf of the Owner of the Goods.

**8.** The Customer warrants that he has reasonable knowledge of matters affecting the conduct of his business, including but not limited to the ICC international commercial terms, customary sale and purchase of the Goods and all other matters relating thereto

**9.** The Customer shall give to the Company sufficient, accurate and executable instructions.

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**10.** The Customer warrants that the description and particulars of the Goods are complete, accurate and correct.

**11.** Unless the Company has agreed in writing to pack the Goods, the Customer warrants that the Goods are properly and sufficiently prepared, packed, stowed, labelled and/or marked, and that the preparation, packing, stowage, labelling and marking are appropriate to any operations or transactions affecting the Goods and in particular to withstand the ordinary risks of handling, storage and carriage.

**12.** The customer warrants that where the Company receives the Goods from the Customer already stowed in or on a Container or any other device constructed for the carriage of goods (each hereafter individually referred to as "the transport unit"), the transport unit is in good condition, and is suitable for the carriage of the Goods to the intended destination.

**13.** The Customer warrants that it has complied with all laws and regulations relating to the nature, condition, packing, handling, storage and carriage of the Goods applicable in the countries or territories of origin, transit or destination.

### **Special Instructions, Goods and Services**

**14.** (a) Unless otherwise previously agreed in writing, the Customer shall not deliver to the Company or cause the Company to deal with or handle Dangerous Goods.

(b) If the Customer delivers to the Company or causes the Company to deal with or handle Dangerous Goods in breach of Clause 12(a) above, the Company shall not be liable for any loss or damage whatsoever caused by or to the Dangerous Goods and the Customer shall defend, indemnify and hold harmless the Company against all penalties, claims, liabilities (whether civil, criminal or otherwise), damages, costs and expenses whatsoever arising in connection with or incidental to such loss or damage, and the Dangerous Goods may without notice be destroyed at Customer's risk and costs or otherwise dealt with at the sole discretion of the Company or any other person in whose custody they may be at the relevant time without compensation to and at the cost of the Customer.

(c) If the Company agrees in writing to accept Dangerous Goods and subsequently, in the sole opinion of the Company, (i) they are deemed to constitute a risk to other goods, property, life or health or (ii) owing to legal, administrative or other obstacles whether as to their carriage, discharge or otherwise they may be detained or cause any other property or person to be detained, they may without notice be destroyed or otherwise dealt with at the expense of the Customer or Owner without compensation or any liability whatsoever attaching to the Company.

**15.** No insurance will be effected except upon express instructions given in writing by the Customer and all such insurances effected by the Company are subject to the usual exceptions and conditions of the policies of the insurance company or underwriters taking the risk. Unless otherwise agreed in writing, the Company shall not be under any obligation to effect a separate insurance on each consignment but may declare it on any open or general policy held by the Company. Should the insurers dispute their liability for any reason whatsoever the insured shall have recourse against the insurers only and the 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 the Company or paid to the Company by its Customers. The company acts solely as agent for the Customer in effecting insurance and does so subject to the limits of liability contained in clause 29 and 30 herein notwithstanding that loss or damage was caused by the Company's negligence or default including any failure to place any insurance or the appropriate insurance.

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**16.** Except in accordance with express instructions previously received in writing and accepted in writing by the Company, the Company shall not be obliged to make any declaration for the purposes of any statute, convention or contract as to the nature or value of any Goods or as to any special interest in delivery.

**17. (a)** Unless otherwise previously agreed in writing by the Company, instructions relating to the delivery or release of goods in specified circumstances only (including without limitation against payment or against surrender of a particular document) are accepted by the Company as agents for the Customer where third parties are engaged to effect compliance with these instructions.

(b) Notwithstanding the neglect or default of the Company, the Company shall not be under any liability in respect of such arrangements referred to in sub-clause (a) above.

(c) In any event and notwithstanding the Company's negligence, the Company's liability in respect of the performance and arranging the performance of such instruction referred to sub-clause (a) above shall not exceed that provided under clause 29 herein.

### **General Indemnities**

**18.** The company does not undertake that all the goods shall depart or arrive by any particular date.

**19.** The Customer undertakes that no claim shall be made against any director, servant or employee of the Company which imposes or seek to impose upon them any liability in connection with any Services undertaken by the Company and if any such claim is made, to indemnify the Company and the said director, servant or employee against all consequences thereof.

**20.** The Customer and the Owner shall hold harmless, defend and keep the Company indemnified from and against:

- (a) All liability, loss, damage, costs and expenses whatsoever including without prejudice to the generality of the foregoing, all duties, taxes, imports, levies, deposits and outlays of whatsoever nature levied by any Authority in relation to the Goods and for all payments and fines arising out of the Company acting in accordance with the Customer's instructions or arising from any breach by the Customer or Owner of any Warranty or obligation contained in these Conditions or from the negligence of the Customer or Owner; and
- (b) Without derogation from sub-clause (a) above, any liability assumed or incurred by the Company when by reason of carrying out the Customer's instructions the Company has reasonably become liable or may become liable to any other party; and
- (c) All claims, costs and demands whatsoever and by whomsoever made or preferred in excess of the liability of the Company under the terms of these Conditions regardless whether such claims, costs and demands arise from or in connection with the negligence or breach of duty of the Company its servants, sub-contractors or agents.

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- (d) Advice and information, in whatever form as may be given, are provided by the Company for the Customer only and the Customer shall defend, indemnify and hold harmless the Company for all liability, loss, damage, costs and expenses arising out of any other person relying on such advice or information. Except under special arrangements, advice and information which are not related to instructions accepted by the Company are provided gratuitously and without liability.
- (e)
- (i) The Customer and Owner expressly agrees that no servant, agent or other person (including any independent contractor) shall in any circumstances be under any liability to the Customer or Owner for any loss or damage or delay of whatsoever kind arising or resulting directly or indirectly from any act, neglect or default on his part while acting in the course of or in connection with his employment or as agent of the Company or otherwise. Without prejudice to the generality of the foregoing every exemption, limitation, condition and liberty herein contained and every right, exemption from liability, defenses and immunity applicable to the Company shall also be available and shall extend to protect every such servant, agent or other person (including any independent contractor) and for the purpose of this condition, the Company is or shall be deemed to be acting as agent or trustee on behalf of and for the benefit of all such servants, agents or other persons (including any independent contractors) and all such persons shall to this extent be or deemed to be parties to the contract between the Company and the Customer or Owner.
- (ii) In this Clause 20, "contractor" and "contractors" include direct and indirect sub-contractors and their respective servants and agents.
- (f) The Customer and Owner shall solely be liable for demurrage or loss, damage, contamination, soiling or detention before during or after the carriage of property (including but not limited to Containers) of the Company or any person or vessel referred to herein caused directly or indirectly by the Customer or Owner or any person acting as servants, agents or independent contractors for or on behalf of either of them.

### **21. Notice of Claim**

Unless notice of loss of or damage to the goods, specifying the general nature of such loss or damage, is given in writing to the Company by the person entitled to receive the goods when they are handed over to him, such handing over is prima facie evidence of the delivery of the goods in good order and condition. Where such loss or damage is not apparent, the same prima facie effect shall apply if notice in writing is not given within 7 consecutive days after the day when the goods were handed over to the person entitled to receive them.

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

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### **Charges, etc.**

**22.** (a) The Customer shall pay to the Company in cash or in such manner as the Company may agree all sums immediately when due without deduction or deferment on account of any claim, counterclaims or set-off and the Customer agrees to waive the right of set-off, if any, as against the company.

(b) When the Company is instructed to collect freight, duties, charges or other expenses from any person other than the Customer, the Customer shall remain responsible and shall make payment of the same to the Company on receipt of evidence of demand and in the absence of evidence of payment for whatever reason by such other person.

(c) On all amounts overdue to the Company, the Customer shall pay to the Company interest, calculated from the date such amounts are overdue until payment thereof, at the rate of two (2) per cent. per month.

(d) Notwithstanding and without prejudice to Clause 22(c), in the event that the Customer fails to pay any sum due to the Company within five (5) days from the date any such sum is due, the Company shall be entitled at any time thereafter by written notice to the Customer declare that:

(i) all credit terms in respect of all or any part of the Services rendered pursuant to these Conditions shall be cancelled, whereupon the same shall be cancelled; and

(ii) all sums payable by the Customer to the Company in respect of all or any part of the Services rendered pursuant to these Conditions have become due and payable, whereupon the same shall immediately or in accordance with the terms of such notice become due and payable.

(e) Any dispute as to the amount or accuracy of any invoice issued by the Company shall be raised by the Customer within 30 days from the date of the invoice, failing which, the Customer is deemed to have conclusively accepted that the invoice is complete and accurate.

(f) Unless otherwise expressly agreed in writing, all invoices rendered by the Company are payable immediately on sight and all monies due shall be paid without any reduction or deferment on account of any claim, counter-claim or set off.

(g) Quotations are given on the basis of immediate acceptance and are subject to withdrawal or revision. Unless otherwise agreed in writing the Company shall be, after acceptance, at liberty to revise quotations or charges with or without notice in the event of changes outside the Company's control including but not limited to charges in currency exchange rates, rates of freight, insurance premiums or any changes applicable to the "Goods".

### **Liberties and Rights of the Company**

**23.** Except insofar as has otherwise been agreed in writing, the Company shall be entitled and the Customer hereby authorizes the Company to enter into contracts on behalf of itself or the Customer and without notice to the Customer,

(a) for the carriage of Goods by any route, means or person;

(b) for the carriage of Goods of any description whether containerised or not on or under the deck of any vessel;

(c) for the storage, packing, transshipment, loading, unloading or handling of Goods by any person at any place whether on shore or afloat and for any length of time;

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(d) for the carriage or storage of Goods in Containers or with other Goods of whatever nature; or

(e) for the performance of any of its own obligations, and to do such acts as in the sole opinion of the Company may be necessary or incidental to the performance of the Company's obligations.

**24.** (a) The Company shall be entitled but under no obligation to depart from the Customer's instructions in any respect if in the sole opinion of the Company there is good reason to do so in the Customer's interest and the Company shall not thereby incur any additional liability whatsoever, other than its liability (if any) hereunder.

(b) The Company may at any time comply with the orders or recommendations given by any Authority. The responsibility of the Company in respect of the Goods shall cease on the delivery or other disposition of the Goods in accordance with such orders or recommendations.

**25.** If at any time the performance of the Company's obligations, in the sole opinion of the Company or any person whose services the Company makes use of, is or is likely to be affected by any hindrance, risk, delay, difficulty or disadvantage whatsoever and which cannot be avoided by reasonable endeavors by the Company or such other person, the Company may, on giving notice in writing to the Customer or Owner or without notice where it is not reasonably possible to give such notice, treat the performance of its obligations as terminated and place the Goods or any part of them at the Customer's or Owner's disposal at any place which the Company may deem in its sole opinion safe and convenient, whereupon the responsibility of the Company in respect of the Goods shall wholly cease. The Customer shall pay on demand any additional costs of carriage and delivery to and storage at such places and all other expenses incurred by the Company.

**26.** If delivery of the Goods or any part thereof is not taken by the Customer or Owner at the time and place when and where the Company or any person whose services the Company makes use of calls upon the Customer or Owner to take delivery thereof, the Company shall be entitled to store the Goods or any part thereof at the sole risk of the Customer, whereupon the liability of the Company in respect of such Goods shall wholly cease and the cost of such storage and all other expenses and liability whatsoever paid or payable or incurred or which may be incurred by the Company shall be paid by the Customer on demand.

**27.** Without prejudice to Clauses 25 and 26, the Company shall be entitled but under no obligation, at the expense of the Customer payable on demand and without any liability on the part of the Company to the Customer or the Owner, to sell or dispose:

(a) on giving 7 days' notice in writing to the Customer of Goods or any part thereof which in the sole opinion of the Company cannot be delivered as instructed; or

(b) without notice to the Customer, of Goods which have perished, deteriorated or altered, or are in immediate prospect of doing so or which has caused or may reasonably be expected to cause loss or damage to any person or property or to contravene any applicable laws or regulations.

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**28.** (a) All Goods and documents in the possession, custody and control of the Company or its agents shall be subject to a general lien and right of detention for all sums (including without limitation all costs and charges payable by the Customer) due to the Company at any time and from time to time whether in respect of Services provided or in respect of such Goods or other goods or otherwise. If the sums due as aforesaid are not satisfied within 7 days of a notice in writing by the Company to the Customer, the Company shall be entitled to sell or dispose of the Goods or documents whether by public auction, private treaty or otherwise, and the proceeds of sale shall be applied in satisfaction of firstly, the costs and expenses of the sale or disposal and secondly, the sums due to the Company without any liability whatsoever on the part of the Company to the Customer. In the event that the proceeds of sale are insufficient to satisfy all sums due to the Company, the Company shall be entitled to recover from the Customer all sums which remain outstanding.

(b) Notwithstanding Clause 28(a) above, when the Goods are liable to perish or deteriorate, the Company's right to sell or dispose of the Goods shall arise immediately upon any sum becoming due to the Company subject only to the Company taking reasonable steps to bring to the Customer's attention its intention of selling or disposing of the Goods before doing so.

**29.** The Company shall have the right to enforce against the Customer and Owner jointly and severally any liability of the Customer under these Conditions or to recover from them any sums to be paid by the Customer which upon demand have not been paid.

### **Containers**

**30.** (a) If a Container has not been packed nor stuffed by the Company, the Company shall not be liable for loss of or damage to the contents thereof if caused by:

i) the manner in which the Container has been packed or stuffed;

ii) the unsuitability of the contents for carriage in Containers

iii) the unsuitability or defective condition of the Container provided that where the Container has been supplied by or on behalf of the Company, this paragraph shall apply only if the unsuitability or defective condition (a) arose without any negligence on the part of the Company or (b) would have been apparent upon reasonable inspection by the Customer or Owner or person acting on behalf of either of them or (c) arose as a result of the peculiarity of the Goods and such peculiarity is not made known to the Company; or

iv) the Container not being sealed at the commencement of any carriage.

(b) The Customer shall defend, indemnify and hold harmless the Company against all liability, loss, damage, costs and expenses arising from one or more of the matters provided for in (a) above.

(c) Where the Company is instructed to provide a Container, in the absence of any specific request in writing, the Company is not under an obligation to provide a Container of any particular type or quality.

(d) Where the Company is responsible for the delivery of a container to the customer's premises and the container suffers any loss or damage whilst in the importer's premises, the company's liabilities for the loss or damage to the container shall be covered up to RM100,000.00, as in clause 32 (iv) (Amount of compensation)

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### General Liability

**31.** (a) Except in so far as otherwise provided by these conditions, the Company shall not be liable for any loss or damage whatsoever arising from

(i) the act or omission of the Customer or Owner or any person acting on their behalf,

(ii) compliance with the instructions given to the Company by the Customer, Owner or any other person entitled to give them;

(iii) insufficiency of the preparation, packing, storage, labelling or marking of the Goods except where such service has been provided by the Company;

(iv) handling, loading, stowage or unloading of the Goods by the Customer or Owner or any person acting on their behalf;

(v) inherent vice of the Goods;

(vi) riots, civil commotion, strikes, lockouts, stoppage or restraint of labour from whatsoever cause or force majeure. Force majeure shall include any acts of God (natural calamities/disasters), act of man, act of parliament or in the case of war, action of foreign enemies, terrorist activities, government sanctions, blockage, embargo, epidemic or pandemic and Government action to contain the epidemic/pandemic, including actions by WHO and other International Organisations. A party shall not be held liable for delay in performing its obligations under this Agreement if any condition under (vi) occurs. The non-performing party must make every reasonable attempt to minimize delay of performance. In the event of any incident that falls under force majeure and the event continues for a length of time, exceeding 120 days, either party may terminate the Agreement, repaying the full amount of the deposit within 10 days of Termination notice.

(viii) any cause or event which the Company could not avoid and the consequences whereof it could not prevent by the exercise of reasonable diligence.

(b) The Company shall not in any circumstances whatsoever and howsoever arising, including without limitation any negligence on the part of the Company, its servants and/or agents be liable for loss or damage howsoever caused to property other than the Goods themselves, indirect or consequential loss or damage, loss of profits, loss of market or the consequences of any delay or deviation

### Amount of Compensation

**32.** Except in so far as otherwise provided by these Conditions, the liability of the Company howsoever arising and notwithstanding that such liability shall have arisen from the neglect or default of the Company, shall not exceed

(a) in respect of all claims other than those subject to the provisions of Clause 42 below, the lesser of

(i) the value of the Goods lost, damaged, misdirected, misdelivered or in respect of which a claim arises; or

(ii) SDR 2.00 per gross kilogram of the said Goods, and shall not exceed SDR 666.67 per package in any event whatsoever in respect of any one claim. Maximum liability shall be SDR 30,000. This includes Multimodal Transport including air, sea and inland waters and,

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- (iii) In the case where the contract of multimodal transport does not include carriage of goods by air, sea or internal waters, the liability of the company shall be limited to SDR 8.33 per kilogram of the gross weight of the goods lost or damaged. Maximum liability shall be SDR 30,000
- (iv) In the case of local logistics services and transportation, the liability shall be based on the principle of indemnity and limited to RM2,800.00 (Malaysian Ringgit Two Thousand Eight Hundred Only) payable per shipping unit or RM5.00 per gross kilogram weight on the goods lost or damaged. Notwithstanding the limitation contained herein, the maximum liability of the company for any loss or damage shall not under any circumstances exceed RM100,000.00 (Malaysian Ringgit One Hundred Thousand Only). This includes cross border transport by road/rail to immediate neighbouring country e.g. Singapore, Thailand, Brunei and Indonesia.

(b) in respect of claims for delay where not excluded by the provisions of these Conditions, the amount of the Company's charges for the services in respect of the Goods delayed.

**33.** For the purposes of Clause 32 and Clause 34, the value of the Goods:

(a) shall be calculated by reference to the invoice value of the Goods plus freight and insurance if paid; and

(b) if there is no invoice value for the Goods, shall be calculated by reference to the value of such Goods at the place and time when they are delivered to the Customer or Owner, their assignees or such persons as instructed by the Customer or should have been so delivered. The value of the Goods shall be fixed according to the current market value or commodity exchange price or if there is no current market value or commodity exchange price, by reference to the normal value of Goods of the same kind and quality

**34.** By special agreement in writing and on payment of additional charges, higher compensation may be claimed from the Company not exceeding the value of the Goods or the agreed value, whichever is the lesser.

**35.** The Company shall, unless otherwise expressly agreed, be discharged of all liabilities under these conditions unless suit is brought within 09 months after the delivery of the goods, or the date when the goods should have been delivered, or the date when failure to deliver the goods would give the consignee the right to treat the goods as lost.

**36.** With respect to loss other than loss of or damage to the goods the 09 months period should be counted from the time when the failure of the Company giving right to the claim occurred.

**37.** (a) The Company shall be discharged of any liability whatsoever if these conditions are not met:

(i) notice of any claim, such notice being a condition precedent to any liability on the part of the Company, is received in writing by the Company or its agent within 7 days after the date specified in (b) below; and

(ii) The Company shall be discharged of any liability whatsoever unless suit is brought in the proper forum within 9 months after the date specified in (b) below.

(b) The date referred to in Clause 37(a) above shall:

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(i) in the case of damage to Goods, the date of delivery of the Goods, and in the case of loss of the Goods, the date the Goods should have been delivered;

(ii) in the case of delay or non-delivery of the Goods, the date that the Goods should have been delivered; and

(iii) in any other case, the event giving rise to the claim.

### **General Average**

**38.** The Customer shall defend, indemnify and hold harmless the Company in respect of any general average or any claims of a general average nature which may be made on the Company and the Customer shall provide such security as may be required by the Company in this connection.

### **Miscellaneous**

**39.** Any notice served by post in relation to or in connection with the Agreement or the Services hereunder shall be conclusively deemed to have been received on the second day following the day on which it was posted to the address of the recipient last known to the Company. Any notice sent by facsimile transmission or electronic data transmission by the Customer or the Owner to the Company shall be conclusively deemed to have been received at the time of actual receipt by the Company. This clause shall be without prejudice to any other agreement or arrangement between the Company and the Customer or Owner relating to communications by means of Electronic Data Interchange.

**40.** The waiver by the Company of a breach or default of any of the provisions set out in these Conditions shall not be construed as a waiver of any succeeding breach of the same or other provisions herein nor shall any delay or omission on the part of the Company to exercise or avail itself of any right power or privilege that it has or may have hereunder operate as a waiver of any breach or default by the Customer.

**41.** The rights and remedies conferred on the Company under these Conditions shall be cumulative and shall be in addition to and without prejudice to any rights or remedies otherwise available (whether at law or in equity) to the Company.

**42.** (a) The defences and limits of liability provided for by these Conditions shall apply in any action against the Company whether such action be founded in contract or in whatsoever form.

(b) Notwithstanding any provisions to the contrary contained herein, Services in relation to goods of a fragile nature such as glass or chinaware; antiques, works of art and pictures; bullion, precious metal objects and jewelry, precious stones; bank notes, coins, travelers' cheques, drafts, credit and charge cards, any cards and documents entitling the holder to receive cash, goods or services, accounts, bills, deeds, evidence of debt; computer data on any medium, bonds, negotiable instruments or securities of any kind; goods of a perishable nature such as plants, foodstuffs or provisions; human remains; special goods such as live animals, birds, reptiles, fish and the like and radioactive cargoes are only rendered by the company solely at the Customer's risk without any liability whatsoever to the Company, including without limitation any liability arising from the negligence of the Company.

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(c) The rates published herewith are for the conveyance to all parts of the world of goods consisting of ordinary merchandise; the Customer is responsible for the payment of any increase in rates, freights, premiums or other charges which may be imposed after the commencement of the transit. Works of art and other goods of high value, goods out of proportion in bulk to their weight such as bicycles, perambulators, feathers, bamboo-furniture or hollow glass, may be accepted at rates which are available from the Company on request. Customs duties, local taxes and charges, portorage and local delivery expenses are additional to the rates for carriage unless otherwise stated. All rates and charges when payable abroad are liable to be slightly increased.

(d) The Company shall have the option of charging by value, weight or measurement, unless otherwise expressly agreed.

### **Jurisdiction and Law**

**43.** Unless otherwise expressly agreed, these Conditions and any claim or dispute arising out of or in connection with the Services provided by the Company shall be subject to the law and the exclusive jurisdiction of the country where the Company has his principal place of business.

### **PART III COMPANY ACTING AS AGENTS**

**44.** (a) To the extent that the Company acts as an agent, the Company does not make or purport to make any contract with the Customer for the carriage, storage or handling of the Goods nor for any other physical service in relation to them and acts solely on behalf of the Customer in securing such services by establishing contracts with third parties so that direct contractual relationships are established between the Customer and such third parties.

(b) The Company shall not be liable for the acts or omissions of such third parties referred to in sub-clause (a) above.

(c) The Company shall not be responsible for any accident or for any act neglect or default howsoever arising whether willful or otherwise on the part of its agents or those with whom it contracts in respect of the Goods to be forwarded, whether they are carriers by land, sea or air (whether shipowners, lightermen, canal, railway or aircraft operators or others) or warehouse keepers or other persons. The Company shall not be responsible for any money paid or remitted by it on behalf of the senders to any persons in respect of the Goods to be forwarded, whether for the purpose of paying duties or charges in respect of the Goods or otherwise. All the general and special exemptions stated in this condition shall apply although the particular rates or charges made by the Company to the senders or persons forwarding the Goods may not be identical with the amounts paid by it to such agents, contractors or other persons.

**45.** (a) Without prejudice to Clause 23, the Company when acting as an agent has the authority of the Customer to enter into contracts on the Customer's behalf and to do such acts so as to bind the Customer by such contracts and acts in all respects notwithstanding any departure from the Customer's instructions.

(b) The Company only forwards Goods subject to the contracts, terms, conditions, and regulations of the various persons, companies or Authorities into whose possession the Goods may pass.

(c) The Customer shall defend, indemnify and hold harmless the Company in respect of all liability, loss, damage, costs or expenses arising out of any contracts made in the procurement of the satisfaction of the Customer's requirements.

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## **Choice of Rates**

**46.** Where there is a choice of rates according to the extent or degree of liability assumed by persons carrying, storing or handling the Goods, no declaration of value where optional will be made unless otherwise agreed in writing.

## **PART IV COMPANY ACTING AS PRINCIPAL**

**47.** To the extent that the Company contracts as principal for the performance of the Customer's instructions, the Company undertakes to perform or in its own name to procure the performance of the Customer's instructions and subject to the provisions of these Conditions shall be liable for the loss of or damage to the Goods occurring from the time that the Goods are taken into its charge until the time of delivery.

**48.** Notwithstanding any other provision in these Conditions, except for the provisions in clauses 32, 33, 34 and 37 herein, if it is proven that loss of or damage to the Goods occurred, the Company's liability shall be determined by the provisions contained in any international convention or national law, the provisions of which:

(a) cannot be departed from by private contract, to the detriment of the claimant; and

(b) would have applied if the claimant had made a separate and direct contract with the actual provider of the particular service in respect of that service or stage of 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.

**49.** Notwithstanding any provision in these Conditions but subject to Clauses 48 and 49, if it can be proved that the loss of or damage to the Goods occurred at sea or inland waterway and the provisions of Clause 48 do not apply, the Company's liability shall be limited to those set out in the international convention applicable to each AFFA Member country and the Company shall be entitled to rely on all defences, exemptions or limitations provided to carriers by the relevant international convention applicable to each AFFA Member country. Reference to the international convention applicable to each AFFA Member country to carriage by sea shall be deemed to include reference to the carriage by inland waterways and the relevant international convention applicable to each AFFA Member country shall be construed accordingly.

**50.** Notwithstanding the provisions of Clause 49, if the loss of or damage to the Goods occurred at sea or on inland waterways, and the Owner, Charterer or operator of the vessel establishes a limitation fund, the liability of the Company shall be limited to the proportion of the said limitation fund allocated to the Goods.

## **Air Carriage**

**51.** If the Company acts as a principal in respect of a carriage of Goods 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 or Montreal Convention may be applicable and the Convention governs and, in most cases limits the liability of carriers in respect of loss of or damage to cargo. Agreed stopping places are those places (other than the places of departure and destination) shown under requested routing and/or those places shown in carriers' timetable as scheduled stopping places for the route. The address of the first carrier is the airport of departure

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## **Both To Blame Collision Clause**

**52.** The current Both-to-Blame Collision Clause as adopted by BIMCO is incorporated in and deemed to form part of these Conditions. If the vessel comes into collision with another vessel as a result of the negligence of the other vessel and any act of negligence or default of the Master, Marines, Pilot or the servant of the carrier in the navigation or in the management of the vessel, the merchant will indemnify the carrier against all loss or liability to the other or non-carrying vessel or her Owner insofar as such loss or liability represents loss of or damage to or any claim whatsoever of the owner of the said goods paid or payable by the carrying vessel or her Owner as part of his claim against the carrying vessel or carrier. The foregoing provisions shall also apply where the Owner operator or those in charge of any vessels or objects other than or in addition to the colliding vessels or objects are at fault in respect of a collision or contract.

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**ADDENDUM**

**Table Illustration of clause 32 (Amount of Compensation)**

	<b>SCENARIO 1</b>	<b>SCENARIO 2</b>	<b>SCENARIO 3</b>
<b>DETAILS</b>	<b>MULTIMODAL TRANSPORT INCLUDING SEA, INLAND WATER AND AIR</b>	<b>MULTIMODAL TRANSPORT EXCLUDING SEA, INLAND WATER AND AIR</b>	<b>LOCAL LOGISTICS SERVICES INCLUDING MULTIMODAL TRANSPORT BY ROAD AND RAIL TO IMMEDIATE NEIGHBOURING COUNTRY</b>
<b>THE LIMIT OF LIABILITY FOR GOODS LOST / DAMAGED / MISDIRECTED / MISDELIVERED</b>	SDR 2.00 per gross kilogram of the gross weight of the goods Not exceed SDR 666.67 per package with maximum liability shall be at SDR 30,000	SDR 8.33 per kilogram of the gross weight of the goods Maximum liability shall be SDR 30,000	RM2,800.00 per shipping unit or RM5.00 (Malaysian Ringgit Five only) per gross kilogram weight on the goods
<b>MAXIMUM LIABILITY</b>	Maximum liability shall be SDR 30,000		Not exceed RM 100,000

- S1 – Local Logistics Services include local services, transportation, warehousing and cross-border transport by road/rail to immediate neighbouring country, e.g Singapore, Thailand, Brunei and Indonesia.
- S2 – If cross-border Multimodal Transport excluding sea & air to more than 1 country, then scenario 2 will apply.