

STANDARD TRADING TERMS AND CONDITIONS

OF

KEX EXPRESS (CANADA) LIMITED

(Version No.1, 17th December 2024)

STANDARD TRADING TERMS AND CONDITIONS

PART I: ALL SERVICES

1. APPLICATION

- 1.1. Subject to Clause 1.2 below, all and any activities and/or services of the Company whether gratuitous or not are subject to these Conditions.
 - (a) The provisions of Part I shall apply to all such services.
 - (b) The provisions of Part II shall apply to the extent that such services are provided by the Company as agent only.
 - (c) The provisions of Part III shall apply to the extent that such services are provided by the Company as principal only.
- 1.2.
 - (a) Where a Bill of Lading (whether or not negotiable), or Road Waybill or Rail Consignment Note or Air Waybill or Combined Transport Bill of Lading or Forwarder Waybill or Forwarder's Cargo Receipt or Warehouse Warrant or Logistics Services Agreement (each of them hereinafter referred to as "**Contract Document**") is issued by or on behalf of the Company and provides that the Company contracts as carrier or principal, the provisions set out in such Contract Document shall prevail in so far as such provisions are inconsistent with or repugnant to these Conditions.
 - (b) Services beyond transportation and logistics services provided by the Company will be subject to the terms and conditions of separate written agreement between the Company and the Customer.
- 1.3. All services are provided by the Company as agents, unless otherwise stated, except under 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 or its employees and the Goods are in the actual custody and control of the Company;
 - (b) to the extent that the Company expressly agrees in writing to act as a principal; or
 - (c) to the extent that the Company is held by a court of law of a competent jurisdiction to have acted as a principal.
- 1.4. Without prejudice to the generality of Clause 1.3 and/or unless otherwise expressly stated:
 - (a) the Fees charged by the Company for a service or services of whatsoever nature shall not in itself determine or be evidence that the Company is acting as an agent or a principal in respect of such service or services;
 - (b) the supplying by the Company of their own or leased equipment shall not in itself determine or be evidence that the Company is acting as an agent or a principal in respect of any

carriage, handling or storage of Goods;

- (c) the Company acts as agent where the Company procures a bill of lading or other document evidencing a contract of carriage or a contract of whatsoever services between a Person, other than the Company, and the Customer or Merchant;
- (d) the Company acts as agent and never as principal when providing services in respect of or relating to customs requirements, taxes, licenses, consular documents, certificates of origin, inspection certificates and other similar services.

2. DEFINITIONS AND INTERPRETATIONS

2.1. In these Conditions, the following words and expressions shall have the following meanings unless the context otherwise requires:-

"Cargo Unit"	Each physical unit or piece of Goods not shipped in package;
"CIM (COTIF)"	means the Convention and Uniform Rules concerning International Carriage by Rail as modified by Vilnius Protocol 1999;
"CMR"	means Convention on the Contract for the International Carriage of Goods by Road approved on 19th May 1956;
"COGSA"	means the U.S. Carriage of Goods by Sea Act, 1936;
"Company"	means KEX Express (Canada) Ltd. and its subsidiaries;
"Conditions"	means these Standard Trading Terms and Conditions;
"Confidential Information"	means any and all manuals, procedures, documents, materials and/or information of a party hereto that is not generally known to the public, whether of a technical, business or other nature (including, without limitation, trade secrets, know-how and information relating to the technology, customers, vendors, business plans, marketing activities, finances and other business affairs of such party), that is disclosed by such party to the other party in written, oral, electronic and/or other forms or that otherwise comes to the knowledge of the other party in the course of its discussions or dealings with, or its physical or electronic access, to the premises of, such party and that has been identified as being proprietary and/or confidential or that by the nature of the circumstances surrounding the disclosure or receipt should reasonably be construed as proprietary or confidential;
"Consignment"	means Goods (whether contained in one or more parcel or package or Cargo Unit and whether dispatched on bulk or met) sent or consigned any one time by the container from one address to another address;

“Consignment Note”	means the consignment note, delivery note, delivery order, pick up order and any documents as mutually agreed in writing or in electronic form, submitted to the Company by the Customer for the purpose of giving instructions to the Company, whether or not signed by the Customer, for each Consignment of Goods tendered by the Customer to the Company for delivering and/or for collecting the Goods from the Designated Address;
“Conveyance”	includes any carton container, flexitank, trailer, transportable tank, flat rack, lift van, skid, pallet, platform or any similar article for transportation and/or storage used to carry or consolidate goods and any equipment associated or connected thereto;
“Customer”	means any Person at whose request or on whose behalf the Company undertakes any business, or provides advice, information or services;
“Dangerous Goods”	means Goods whose storage, handling or transportation is, because of their dangerous or hazardous or noxious nature, subject to special regulation under the International Maritime Dangerous Goods Code, IATA Dangerous Goods Regulations, Regulations concerning the International Carriage of Goods by Rail (RID), European Agreement Concerning International Carriage of Dangerous Goods by Road (ADR) and/or other applicable laws. These include, without limitation, Goods which are explosive, oxidising, compressed or liquefied gas, combustible, flammable, poisonous, perishable or radioactive;
“Delivery Address”	means the delivery bay or the applicable area of an address designated by the Customer as described in the Consignment Note and excludes a post office box to which the Goods will be delivered;
“Designated Address”	means the bay or the practicable area of an address of storage designated by the Customer as described in the Consignment Note and/or the Warehouse Warrant and excludes a post office box to which the Goods will be collected;
“Distribution Centre”	means the Storage facility or facilities where the Company stores and/or handles the Goods in accordance with the instructions from the Customer;
“Fees”	shall mean any and all Service Fees, charges and any other sums payable by the Customer to the Company;
“Force Majeure”	means, in relation to either party, any circumstances that are (i) beyond the reasonable control of the party claiming Force Majeure, (ii) reasonably unforeseeable and (iii) of such a nature as to prevent or prohibit that party's performance (including, without limitation, any of the following: fire, flood, epidemic, earthquake, storm, tidal wave or other acts of nature; riot, war, hostility, public disturbance or acts of public enemies; strike, lock-out or other form of industrial action or work stoppages or individual actions; prohibitions by or acts of governments or public agencies; and failure or interruption of public or private transportation or other utilities);

“Goods”	shall mean all goods delivered to the Company for or relating to the purpose of the Services including Dangerous Goods and Special Goods;
“Hague Rules”	means the provisions of the International Convention for the Unification of certain rules Relating to Bills of Lading signed at Brussels on 25th August 1924;
“Hague-Visby Rules”	means the Hague Rules as amended by the Protocol signed at Brussels on 23rd February 1968;
“Canada”	means the country of Canada, including all its provinces and territories.
“Instructions”	means a statement of the Customer's specific requirements and includes, but not limited to, the instructions specified on the front of the Shipper's Instructions form and/or on the Contract Documents;
“Licensed Materials”	shall mean any documents and materials in any medium (including any software and related documentation, operation procedure manuals and Standard Operating Procedures) provided from time to time by the Company to the Customer for or relating to the Services of these Conditions;
“Merchant”	includes the owner, shipper and consignee of the Goods and any other Person who is or may become interested in the Goods and anyone acting on their behalf;
“Montreal Convention”	means the Convention for the Unification of Certain Rules for International Carriage by Air signed at Montreal on 28 May 1999;
“Package”	means the unit of Goods stated on the face of the "Bill of Lading" (whether or not negotiable), or "Road Waybill" or "Rail Consignment Note" or "Air Waybill" or "Combined Transport Bill of Lading" or "Forwarder Waybill" or "Forwarder's Cargo Receipt" or "Warehouse Warrant" or cargo receipt on Consignment Note in whatsoever forms for the particular Services;
“Relevant Authority”	means any customs authority, customs inspection stations, port and harbour authorities and any other authorities having legal jurisdiction over any element of the Carriage and/or the Goods;
“RTFR”	means Rail Freight Transport Regulations of China (TIEYUN No.40);
“Services”	means the services to be provided by the Company as set in writing in whatsoever document arising from and relating to the Services to be provided;
“Service Fees”	shall mean the fees payable by the Customer to the Company for the Services;
“Shipping Company”	means any Person which owns, manages, charters or operates the ship, truck, railway, aircraft or any conveyance of transport directly or indirectly engaged by the Company for the Carriage of the Goods;

“SMGS”	means the Agreement on International Goods Transport by Rail in force from 1 November 1951 and subsequent amendments;
“Special Goods”	means any perishable, chilled, frozen, fragile, odd size Goods or other Goods, items, articles and things requiring special handling or care;
“Storage”	means care, custody, control, storage, consolidation process, distribution process, inventory management, traveling, loading and unloading process and other Services rendered to the Customer in relation to the Goods stored and handled by the Company;
“VGM”	means Verified Gross Mass under the amendments made to the International Convention for the Safety of Life at Sea which came into effect on 1 July 2016;
“Warehouse Warrant”	means whatsoever storage receipts issued by the Company to the Customer;
“Warsaw Convention”	means the Convention for the Unification of Certain Rules relating to International Carriage by Air signed at Warsaw on 12 th October 1929 or that Convention as amended at the Hague, 28 th September 1955, whichever may be applicable;
“York Antwerp Rules”	means the York Antwerp Rules 1974 or any latest applicable amendments.

2.2. In these Conditions, unless the context requires otherwise:

- (a) references to statutory provisions and these Conditions or any other documents referred to herein shall be construed as references to those statutory provisions and these Conditions or such documents as replaced, amended, re-enacted or supplemented from time to time;
- (b) words importing the singular including the plural and vice versa;
- (c) words importing a gender include every gender;
- (d) references to persons shall include individuals, firms, companies and unincorporated bodies or association
- (e) references to Clauses and Schedules are to Clauses and Schedules of these Conditions;
- (f) Clause headings and index are inserted for convenience only and have no legal effect.

2.3. All representations, warranties, undertakings, agreements, covenants, obligations, liabilities, guarantees and indemnities expressed in these Conditions or otherwise implied to be made, given or assumed by the Customer shall be deemed to be made, given or assumed by the Customer and the Merchant jointly and severally.

2.4. The word "include" shall be construed to mean "include without limitation" and the word "including" shall be construed accordingly.

3. CUSTOMER'S OBLIGATIONS

3.1. The Customer enters into any transactions or business with the Company hereby warrants that it is either the Merchant or the authorised agent of the Merchant of the Goods and that it is authorised to accept and is accepting these Conditions not only for itself but also as agent for and on behalf of the Merchant of the Goods.

- 3.2. When the Customer acts as the agent of the Merchant, the Customer also accepts personal liability to the Company, but without prejudice to any of the rights or remedies of the Company against the Merchant, and so that in respect of such transaction or business the Company is entitled to enforce its rights or remedies, including but without limiting the rights to recover any sum payable to the Company, against the Customer and the Merchant jointly and severally.
- 3.3. The Customer warrants that it has reasonable knowledge of matters affecting the conduct of its business, including but not limited to the terms of sale and purchase of the Goods and all other matters relating thereto.
- 3.4. The Customer agrees to, within a reasonable time stipulated by the Company, supply the Company with all the necessary and/or relevant information to enable the Company to perform the Services. The Customer acknowledges that the Company shall rely on such information for the planning and performance of the Services. If such information is not supplied within the stipulated time, the Company is entitled to additional charge due to the delay in providing the necessary and/or relevant information.
- 3.5. The Customer further warrants that:
- (a) The Goods are securely properly and sufficiently packed, labelled and/or prepared with the appropriate Package or Cargo Unit, and that the Company has no liability for any loss of or damage to the Goods which are improperly or insufficiently packed or prepared, no matter how such loss or damage is caused.
 - (b) Where the Goods delivered by or on behalf of the Customer are already carried in or on containers, trailers, flat racks, tilts, railway, wagons, tanks, igloos, or any other transportation unit:
 - (i) the transport unit is in good condition, is suitable to carry and/or store the Goods loaded therein or thereon, and is suitable for the intended carriage and/or storage and other handling for the purpose of the Services; and
 - (ii) the Goods are suitable for the carriage and other handling in or on the transport unit and have been properly and competently packed or loaded in or on the transport unit.
 - (c) All particulars, descriptions, values and other particulars of the Goods furnished to the Company for customs and other purposes are true, complete and accurate and are in such format as the Company may reasonably request.
 - (d) In addition and without prejudice to any provisions of Clause 7, the Goods are fit and suitable for the carriage, Storage, packing, unpacking and other handling in accordance with, pursuant or related to the Services.
 - (e) The Customer shall keep the Company fully informed of any particular risk relating to the Goods and, including, their possible deterioration or damage or their dangerous or special nature or likelihood to contaminate or otherwise affect other Goods, property, Persons and/or the environment.
 - (f) The consignee or other Person entitled to the delivery of the Goods shall take delivery of

the Goods upon their arrival at the Delivery Address and shall pay all necessary charges, taxes and duties and shall comply with all the necessary formalities and procedures and within a stipulated or reasonable time.

- 3.6 Without prejudice to Clause 3.5 above, the Customer irrevocably represents and warrants to declare and provide to the Company all relevant information that are required under any applicable law for the purpose of complying with their obligation under the VGM. The Customer further agrees to indemnify the Company and/or its employees, agents or assigns, for any claim, loss, expenses, damage, liability, delay or costs arising out of any inaccurate, incomplete or incorrect provision of information relating to the VGM, whether or not the Customer has taken due care in providing the same to the Company.

4. COMPANY'S OBLIGATIONS

- 4.1. Subject to and upon the terms and conditions of these Conditions, the Company agrees to provide and the Customer hereby appoints the Company to provide the Services.
- 4.2. The Company shall use all reasonable skills, diligence and endeavours to provide the Services.
- 4.3. The responsibility of the Company for the performance of the Services shall be limited to that part when the Company takes possession of the Goods for the performance of the Services up to the completion of the Services.
- 4.4. The Company shall only be obliged to provide services not specifically included in the Services if a change in writing is made between the parties. Without prejudice to the foregoing, provided prior consent in writing shall have been obtained from the Customer, the Customer shall be obliged to pay the Company in relation to all services rendered by the Company at the rate charged by the Company in accordance with its then current usual practices, as certified by a duly authorised officer of the Company.
- 4.5. Unless otherwise specifically provided, time shall not be of the essence of these Conditions.

5. RIGHTS OF COMPANY

- 5.1. The Company shall be entitled to perform any of its Services or exercise any of its powers or discretions hereunder by itself or its parent, subsidiary or associated companies, subcontractors or agents. In the absence of agreement to the contrary, any contract to which these Conditions may apply is made by the Company on its own behalf and also as agent for and on behalf of any such parent, subsidiary or associated company, subcontractors or agents and any such company shall be entitled to the benefit of these Conditions.
- 5.2. The Company shall be entitled and is so authorised, except insofar as has been otherwise agreed in writing, 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, unpacking, transportation, transshipment or other handling of Goods by any Person at any place whether on shore or afloat and for any length of time;
- (d) for the carriage or Storage of Goods in containers or with other goods of whatever nature;
- (e) for the performance of its own obligations;

and to do such acts or enter into other contracts or arrangements as in the opinion of the Company may be necessary or incidental to the performance of the Company's obligations and the Services.

- 5.3. The Company shall be entitled but not obliged, to depart or deviate from the Customer's instructions in any respect if in the opinion of the Company there is good and reasonable reason to do so in the Customer's interest or is otherwise expedient to do so and it shall not thereby incur any additional liability. The Customer shall pay all additional Fees reasonably incurred upon demand by the Company.
- 5.4. The Company may at any time comply with the orders or recommendations given by any Relevant 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. The Customer shall bear and pay all duties, taxes, fines, imports, expenses or losses incurred or suffered by reason thereof and shall indemnify the Company in respect thereof.
- 5.5. Without prejudice to the generality of the foregoing, the Company is authorised to agree with any third party the fees payable to such third party without reference to or further authorisation from the Customer. It is agreed that the difference between the fees payable by the Company to the third party, and the fees payable by the Customer to the Company is the Company's commission or remuneration or profit. The Customer waives any and has no right of enquiry of the fees payable to the third party and the Company is not under any duty to account to the Customer for the Company's commissions, remunerations or profits.
- 5.6. The Company or any Person authorised by the Company shall be entitled, but under no obligation, to open any container or package at any time and to inspect the Goods. If it thereupon appears that the contents of any part thereof cannot safely or properly be carried further, either at all or without incurring any additional expenses or taking any measures in relation to the container or its contents of any part thereof, the Company may abandon the transportation thereof and/or terminate the Services and/or take any measures and/or incur any reasonable additional expense to carry or to continue or to store the same ashore or afloat under cover or in the open, at any place, where storage shall be deemed to completion of the Services. The Customer shall indemnify the Company against any reasonable additional expenses so incurred upon first written demand.
- 5.7. The Company is not obliged to arrange for the Goods to be carried, forwarded, packed, unpacked stored or handled separately. The Company is authorised but is not obliged to consolidate the Goods of the Customer with other goods.

6. COMPANY CONTRACTS AS AGENT

- 6.1. Where the Company enters into a contract on behalf of the Customer in its own name with any third party arising from and/or incidental to the Services, the Company is not a carrier for the purposes of the Carriage by Air Ordinance or the Carriage of Goods by Sea Ordinance (or their equivalent) or for any other purposes, nor does the Company make or purport to make any

contract as a principal with the Customer for the carriage, Storage, transportation, transshipment, loading, unloading, pick and pack service or other handling of the Goods. The Company's sole obligation is to procure contracts for the carriage, Storage, transportation, transshipment, loading, unloading, pick and pack service or other handling of the Goods by the third party.

- 6.2. In addition and without prejudice to the exceptions and limitations contained in these Conditions, the Company shall be entitled to the benefit of all exceptions and limitations in favour of any third party expressly contained or implied in the Company's contract with such third party. The Customer shall not seek to impose on such third party any liability greater than that accepted by the third party under such contract or the exceptions and limitations on these Conditions whichever is the lesser.

7. DANGEROUS GOODS AND SPECIAL GOODS

- 7.1. 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 and/or Special Goods. The Customer shall further specifically notify the Company in writing if the Goods are "Dangerous Goods" or "Special Goods."
- 7.2. The Customer warrants that it has obtained all necessary permits for the performance of the Services (including transportation and/or Storage) on the Dangerous Goods and/or Special Goods.
- 7.3. If the Customer is in breach of Clause 7.1 and 7.2 above, it shall be liable for all expenses, loss or damages whatsoever caused by or to or in connection with the Goods howsoever arising and shall defend, indemnify and hold harmless the Company against all penalties, claims, damages, costs and expenses and any other liabilities whatsoever arising in connection therewith and the Goods may without notice be destroyed 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.
- 7.4. If the Company agrees to accept Dangerous Goods and/or Special Goods and then in the opinion of the Company or any other Person they constitute a risk to other goods, property, life or health they may, without notice, be destroyed, disposed of or abandoned or otherwise dealt with at the sole discretion of the Company at the sole expense and risk of the Customer and Merchant jointly and severally without any liability to the Company or any other Person in whose custody or control they may be at the relevant time and without prejudice to the Company's entitlement to the Fees.
- 7.5. The Customer shall ensure that the Dangerous Goods and/or Special Goods are packed in a manner adequate to withstand the risk of performance of the Services having regard to their nature and in compliance with laws, regulations or requirements of Canada or whatsoever applicable country. The Company shall not be liable for any loss and/or damage to the Dangerous Goods and/or Special Goods arising out of and resulting from the Customer's failure in such obligations.
- 7.6. The Dangerous Goods and/or Special Goods shall be properly marked and labelled on the outside of the Packages and/or Cargo Units indicating the nature and character of any such Dangerous Goods and/or Special Goods so as to comply with laws, regulations and/or requirements of Canada or whatsoever applicable country.
- 7.7. The Customer shall ensure that special instructions and material safety data sheet in writing for the handling and care of the Dangerous Goods and/or Special Goods have been received by the Company at least one (1) clear calendar day before the date of delivery or picking up or Storage,

where applicable, of the Dangerous Goods and/or Special Goods.

- 7.8. Except under special arrangements previously made in writing the Company will not accept or deal with bullion, coins, precious stones, jewellery, valuable, antiques, pictures, livestock or plants. Should the Customer nevertheless deliver any such goods to the Company or cause the Company to handle or deal with any such goods otherwise than under special arrangements previously made and accepted in writing, the Company shall be under no liability whatsoever for or in connection with such goods or any part thereof (including without limitation any loss or damage or non-delivery or mis-delivery or delay) howsoever caused and notwithstanding that the value may be shown, declared or indicated on any documents accompanying the shipment.
- 7.9. The Customer undertakes not to tender for transportation any Goods which require temperature control without previously giving written notice of their nature and particular temperature range to be maintained. The Customer further undertakes that the container has been properly pre-cooled or pre-heated as appropriate, that the Special Goods have been properly stuffed in the container and that its thermostatic controls have been properly set by the Customer. If the above requirements are not complied with the Company shall not be liable for any loss of or damage to the Special Goods caused by such non-compliance.
- 7.10. The Company shall not be liable for any loss of or damage to the Goods arising from defects, derangement, breakdown, stoppage of the temperature controlling machinery, plants, insulation or any apparatus of the container, provided that the Company shall before or at the beginning of the Services or carriage exercise due diligence to maintain the refrigerated container in an efficient stage.
- 7.11. Where the Company has undertaken, by special arrangement, to carry the Special Goods in particular temperature or temperature range, the Company undertakes only that the temperature control machinery shall perform within the operating specification of the equipment and make no warranty or agreement with respect to the actual temperature for any Special Goods.

8. METHODS AND ROUTES OF TRANSPORTATION

- 8.1. The Company may at any time and without notice to the Merchant use any means, routes and procedures of transport or storage or stowage whatsoever, load or carry the Goods on any mode of transport, transfer the Goods from one Conveyance to another, at any place unpack, pack or remove the Goods and/or forward the same in any manner whatsoever, proceed at any speed and by any route in the Company's absolute discretion and proceed to or stay at any place whatsoever once or more often and in any order, load or unload the Goods from any Conveyance at any place whatsoever, compliance with any orders, or recommendations given by any Relevant Authority or any Person or body purporting to act or act on behalf of such Relevant Authority or having under the terms of the insurance on the Conveyance employed by the Company the rights to give orders or directions for the purpose of carrying out the Services.
- 8.2. Anything carried out in accordance with Clause 8.1 hereinabove or any delay arising therefrom shall be deemed to be within the Services and shall not be regarded as a deviation of whatsoever nature or degree.

9. WAREHOUSING

Pending forwarding or delivery, Goods may be warehoused or otherwise held at the risk of the

Customer or the Merchant at any place at the absolute discretion of the Company, unless it is caused by the wilful default or gross misconduct or gross negligence of the Company, and the cost therefore shall be for the account of the Customer.

10. INSURANCE

Where the Customer so desires, the Company shall, upon prior written instructions given by the Customer and accepted in writing by the Company, act solely as agent of the Customer using reasonable efforts to arrange insurance coverage incorporating waiver of subrogation for and on behalf of the Customer at the Customer's expenses. The Company does not warrant or undertake any such insurance shall be accepted by the insurance company or underwriters. All insurances effected by the Company are subject to the usual exceptions and conditions of the policy 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 the Goods. Where the underwriters dispute their liability for whatsoever reasons, the Customer, as the assured, shall have recourse against the underwriters only.

11. DECLARED VALUE

- 11.1. Except in accordance with express instructions received in writing from the Customer 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.
- 11.2. Without prejudice to the generality of Clause 11.1 where there is a choice of rates according to the extent or degree of the liability assumed by carriers, warehousemen or others, the Goods will be, amongst other things, forwarded, dealt with, at the Customer's or the Merchant's risk and at such charges (including the lowest charges) as the Company may in its absolute discretion decide, and no declaration of value, where optional, will be made, unless express instructions in writing to the contrary have previously been given by the Customer and accepted by the Company in writing.
- 11.3. A mere statement or declaration of the value or nature of the Goods for insurance or export or customs or other purposes is not and shall not be construed to be instructions to the Company to make any declaration for the purposes of Clauses 11.1 and 11.2 above.
- 11.4. Subject to Clauses 11.1, 11.2 and 11.3 hereinabove, the Company's liability may be increased to a higher value by a declaration in writing of the value of the Goods by the Customer upon delivery to the Company of the Goods for Services and accepted in writing by the Company and, if required by the Company, extra fees paid. In such case, if the actual value of the Goods shall exceed such declared value, the value shall nevertheless be deemed to be the declared value and the Company's liability, if any, shall not exceed the declared value and any partial loss or damage shall be adjusted pro rata on the basis of such declared value.

12. DELIVERY AND RELEASE

Unless otherwise previously agreed in writing by the Company, instructions relating to the delivery or release of Goods against payment or against surrender of a particular document shall be in writing.

13. DATES AND TIMES

Unless otherwise previously agreed in writing that the Goods shall depart or arrive by a particular date and time, the Company accepts no responsibility for departure or arrival dates and time of the Goods. Any mention herein of whatsoever dates and times are solely estimated dates and times and for information of the recipient only.

14. DUTIES

The Customer shall be liable for any duties, taxes, levies, deposits or outlays of any kind levied by any Relevant Authority for or in connection with the Goods and for any storage charge, demurrage, fines, expenses, loss or damage whatsoever incurred or sustained by the Company in connection therewith. The Customer further undertakes to indemnify the Company with such loss and damages suffered by the Company upon first written demand.

15. PRESERVE RIGHTS

The Company shall not be under any duty or obligation to the Customer or the Merchant to give any notice or otherwise take any action to preserve or protect the rights of the Customer or the Merchant in relation to any claim or remedy which the Customer or Merchant may have against any third parties.

16. GENERAL EXEMPTIONS

16.1. In addition to every exemption or immunity whatsoever that the Company is entitled to be benefited under these Conditions, the Company shall in any event and in all cases whatsoever be relieved of liability for any loss or damage if such loss or damage was caused by or resulted from but not limited to:

- (a) the wrongful act or neglect of the Customer and/or the Merchant;
- (b) compliance with the instructions of the Customer and/or the Merchant and/or any Person entitled to give them;
- (c) wrongful, false, incorrect, inaccurate or insufficient description of Goods or other particulars declared by the Customer of the Goods;
- (d) lack of, insufficiency of, or defective condition of packing of the Goods;
- (e) handling, loading, stowage, or unloading of the Goods by the Customer;
- (f) inherent vice and/or ordinary wear and tear of the Goods;
- (g) insufficiency or inadequacy of marks or numbers on the Goods, covering or unit loads;
- (h) pre and post-Services loss and/or damage;
- (i) riots, civil commotion, strikes, lockouts, stoppage or restraint of labour from whatsoever

course;

- (j) military actions;
- (k) nuclear incident;
- (l) Force Majeure;
- (m) fire or flood, unless caused by the actual fault or privity of the Company or storm and their consequences;
- (n) saving or attempting to save life or in avoidance of any risk during performance of the Services; or
- (o) any cause or event which the Company could not avoid by the exercise of reasonable diligence.

17. CUSTOMER GENERAL INDEMNITIES

- 17.1. The Customer and Merchant shall upon first written demand, defend, indemnify and hold harmless the Company from and against all claims, liabilities, losses, damages, penalties, obligations, causes of action, interest, costs (including legal costs) and expenses arising from or connected with or out of:
- (a) any claims, enforcement actions, fines, or costs which are the result of the Customer's or Merchant's controlled actions, or recalls or retrievals of the Goods;
 - (b) any product liabilities relating to the nature of the Goods unless caused by the Company's negligence or wilful misconduct;
 - (c) acts, negligence or default of the Customer or Merchant; or
 - (d) the Company acting in accordance with the Customer's or Merchant's instructions;
 - (e) a breach of warranty or obligation by the Customer or Merchant;
 - (f) the Customer's or Merchant's inaccurate or incomplete or ambiguous information or instructions;
 - (g) the fraudulent or criminal act of the Customer or Merchant; or
 - (h) violations by the Customer or Merchant of any applicable laws including but not limited to those relating to the protection of the environment or public health.
- 17.2. Advice and information in whatever form may be given are provided by the Company for the Customer only and the Customer shall defend, indemnify and hold harmless the Company from and against all claims, liabilities, losses, damages, costs and expenses arising out of any other Person relying on such advice or information.
- 17.3. The Customer undertakes that no claim shall be made against any employee, sub-contractor or agent of the Company which imposes or attempts to impose upon any of them any liability

whatsoever in connection with the Goods or any services provided or to be provided by the Company. If any such claim should nevertheless be made, the Customer shall indemnify the Company against all consequences thereof upon first written demand.

- 17.4. Without prejudice to the foregoing, every such employee, sub-contractor or agent shall have the benefit of all Conditions herein, as if such Conditions were expressly for their benefit. In entering into whatsoever agreement for the purpose of the Services, the Company, to the extent of those Conditions, does so not only on its own behalf, but as agent and trustee for such employee, sub-contractor and agent.
- 17.5. In this clause, "sub-contractors" includes direct and indirect sub-contractors and their respective employees and agents.
- 17.6. The Customer shall be liable for the loss, damage, contamination, soiling, detention or demurrage during the term of the provision of Services of property of the Company or any Person or conveyance caused by the Customer or Merchant or any Person acting on behalf of either of them or for which the Customer or Merchant is otherwise responsible.

18. FEES

- 18.1. Fees shall be deemed fully earned on receipt of the Goods by the Company and shall be paid and non-returnable in any event.
- 18.2. The Customer is primarily liable for the payment of all Fees whether the same, or any of them, are to be pre-paid or to be collected.
- 18.3. All Fees shall be paid without any set-off, counterclaim, deduction or stay of execution.
- 18.4. The Company at its discretion may request an advance to cover Fees, duties, charges, taxes and/or whatsoever other expenses payable before the Company's invoice is rendered. Forthwith upon such written request being made, the Customer shall make such advance to the Company.
- 18.5. When the Company is instructed to collect Fees and/or whatsoever other expenses from any third party other than the Customer, the Customer shall remain responsible for the payment of the Fees and/or expenses. The Customer shall forthwith upon first written demand pay the Company such Fees and/or expenses or any balance thereof together with interest (if applicable) without deduction or set-off or counterclaim. Without prejudice to the generality of the foregoing, this provision shall apply when the Goods are refused by any Person entitled to delivery or confiscated by the customs or any Relevant Authority or for any reason it is in the opinion of the Company not practicable or impossible to arrange for the delivery and/or return of the Goods.
- 18.6. On all amounts overdue to the Company, the Company shall be entitled to interest calculated on a monthly basis from the date such accounts are overdue until payment thereof at the rate of 2% per month during the period that such amounts are overdue.

19. QUOTATIONS

Quotations are given on the basis of immediate acceptance by the Customer and are subject to withdrawals or revisions by the Company. Unless otherwise agreed in writing by the Company, the Company, notwithstanding the acceptance of the quotations by the Customer, shall be at liberty to revise quotations or charges with or without prior notice in the event of changes

occurring in currency exchange risks, rates of freight, storage charges, insurance premiums or any charges applicable to the Goods in connection with the Services.

20. MATTERS AFFECTING PERFORMANCE

20.1. If at any time, the Services are or are likely to be affected by any hindrance, risk, delay, difficulty or disadvantage of any kind (including the conditions of the Goods) whensoever and howsoever caused and/or arising, whether or not the Services have commenced, the Company may:

- (a) without notice to the Customer and/or the Merchant abandon the Services and, where reasonably possible, place the Goods or any part of them at the Customer's and/or Merchant's disposal at any place which the Company may deem safe and convenient, whereupon the responsibility of the Company in respect of such Goods shall forthwith; or
- (b) without prejudice to the Company's rights subsequently to abandon the Services under Clause 20.1(a) hereinabove, continue the Services.

In any event, the Company shall be entitled to the entire Fees on Goods received for Services and the Customer and/or Merchant shall pay any additional costs and expenses resulting from the abovementioned circumstances.

20.2. The liability of the Company in respect of the Goods shall cease on the delivery or other disposition of the Goods in accordance with the order or recommendation given by any Relevant Authority or any Person acting or purporting to act as or on behalf of such Relevant Authority.

21. LIEN AND SUSPENSION OF SERVICES

21.1. Without prejudice to any other rights or remedies which the Company may have (including but without limitation under Clause 20), if delivery of the Goods or any part thereof is not taken by the Customer or Merchant or other Person entitled to the delivery of the same at the time and place when and where the Company, or any Person whose Services the Company makes use of, is entitled to call upon the Customer or Merchant or other Person entitled to the delivery of the same to take delivery thereof, the Company or such other Person shall be entitled, but is not obliged, to store or cause to be stored the Goods or any part thereof in the open or under cover at the sole risk and expense of the Customer and/or the Merchant whereupon any liability which the Company may have in respect of the Goods or that part thereof stored as aforesaid shall wholly cease and the cost of such storage shall upon first written demand be paid by the Customer to the Company.

21.2. The Company shall have a general and particular lien on the Goods and any documents relating thereto for all sums of whatever nature due and payable by the Customer to the Company including, without limitation, charge for attending, co-operating, reporting, fumigating, devanning, restoring, storing or reconditioning and/or all expenses incurred for the benefit or protection of the Goods, and also for any payments, duties, fines or other expenses including but not limited to interest and legal costs and expenses, due at any time to the Company from the Customer.

21.3. If any amount due and payable by the Customer to the Company is not paid, upon the giving of fourteen (14) calendar days prior written notice, the Company may, at its absolute discretion and without notice, suspend or cease providing all or any part of the Services without any liability

whatsoever to the Customer or any third party and, at the Company's absolute discretion, may proceed to sell the Goods by way of public auction or private tender without further notice. The rights of the Company are reserved for any shortfall subsequent to the disposal of the Goods.

21.4. Where applicable, the obligations and/or responsibilities of the Company and/or the performance of the Services shall be suspended when:-

- (a) the Customer and/or the Merchant requests the Company to deliver the Goods to or hold the Goods at some place other than the original stipulated address or Delivery Address; or
- (b) the consignee and/or receiving party refuses or is unable or fails to take delivery of the Goods at the original stipulated address or Delivery Address; or
- (c) the Customer requests the Company to perform beyond the scope of the Services;

and shall resume when such situations are resolved in writing between the Customer and/or Merchant and/or consignee and/or receiving party and the Company. If the situation cannot be resolved in writing between the Customer and/or Merchant and/or any other Person entitled to delivery and the Company within fourteen (14) calendar days from the occurrence of any of the said events (or such longer period as the Company may, at its absolute discretion, elect), the Company is entitled to immediately terminate the Services without any liability to the Customer and/or any third party.

21.5. The rights of the Company under this Clause 21 are independent and cumulative.

22. GENERAL LIABILITY

22.1. The Company shall not be responsible or liable for any damage to or loss or non-delivery or mis-delivery or mis-direction of Goods or for any delay or deviation in respect of the transportation or delivery or other handling of the Goods, unless it is proved that such damage, loss, non-delivery, mis-delivery, mis-direction, delay or deviation occurred while the Goods were:

- (a) in the actual custody of the Company;
- (b) under its direct and actual control; and
- (c) that the damage, loss, non-delivery, mis-delivery, mis-direction, delay or deviation was due to the wilful neglect or wilful default of the Company or its own servants.

22.2. Notwithstanding any negligence on the part of the Company, its servants or agents or sub-contractors or other Persons for whom the Company is responsible, the 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 conduct or wilful default of the Company or its own servants.

22.3. Save as provided in Clauses 22.1 and 22.2, the Company shall be under no liability whatsoever and howsoever caused and/or arising and whether in respect of or in connection with the Goods or business advice, information or Services or otherwise, and whether or not there is negligence on the part of Company, its servants or agents or sub-contractors or other Persons for whom the Company is responsible.

- 22.4 The Company shall not in any event, be under any liability whatsoever for any special, incidental, indirect, consequential, exemplary loss or damage or pure economic loss or damage of any kind (including without limitation loss of market, profit, revenue, business or goodwill) regardless of whether such loss or damage was reasonably foreseeable, arises in tort or otherwise or whether the Company was actually told of the possibility of such loss or damage howsoever caused.

23. LIMITATION OF LIABILITIES

- 23.1. The Customer acknowledges that the Company relies upon and would not have entered into these Conditions without the exclusion and limitation of liabilities set out in this Clause.

- 23.2. Subject to these Conditions and any applicable laws, the Company shall only be liable to the Customer for the type of loss or damage set out below attributed to the act, negligence or default of the Company or the Company's agents, and subject to the financial limits stated:-

- (a) physical loss of or damage to the Goods, but not exceeding the lesser of:-
 - (i) the net invoice value of the Goods;
 - (ii) the reasonable cost of repair in the case of physical damage;
 - (iii) US\$ 3.00 per gross kg of the Goods lost, damaged or mis-delivered;
 - (iv) US\$ 50.00 per Package or Cargo Unit;
 - (v) US\$ 100.00 per consignment
 - (vi) US\$ 500.00 per cubic meter where the Goods cannot be categorised as Package and/or Cargo Unit; or
 - (vii) the Service Fees paid or payable by the Customer for the particular consignment of Goods or the Services.
- (b) physical loss of or damage to property of any form other than Goods, but not exceeding the lesser of:-
 - (i) the depreciated value of the container or vehicle or property;
 - (ii) the reasonable cost of repair in the case of physical damage; or
 - (iii) the Service Fees paid or payable by the Customer for the particular consignment of Goods or the Services.
- (c) Delay, mis-delivery or mis-direction in the delivery of the Goods, but not exceeding the lesser of:-
 - (i) actual and direct loss or damage suffered by the Customer; or
 - (ii) the Service Fees paid or payable by the Customer relating to the Goods which

have been delayed, mis-delivered or mis-directed.

- 23.3. In no event shall the Company's liability under one or more of Clauses 23.2 (a) through (c) exceed US\$100,000.00 per event arising from a common cause.
- 23.4. If there is no invoice value for the Goods, the compensation shall be calculated by reference to the value of such Goods at the place and time when they are delivered to the Customer or Merchant or should have been so delivered. The value of the Goods shall be fixed according to the current market price or, if there is no commodity exchange price or current market price, by reference to the normal value of goods of the same kind and quality.
- 23.5. Where the Hague Rules, the Hague-Visby Rules, the Warsaw Convention, the Guadalajara Convention, Montreal Convention, CMR, CIM(COTIF), SMGS or RTFR or any legislation making either of them compulsorily applicable to the Services apply, the limitation of liability as laid down by such international convention or legislation shall prevail. Notwithstanding the aforesaid, for carriage of Goods by sea to or from any port of the United States, its territories or possessions, or if suit is brought in the United States, these Conditions shall have effect subject to the provisions of the COGSA. Where COGSA applies, the Company's liability in respect of the Goods shall in no event exceed US\$500 per package or in the case of Goods not in packages, per customary freight unit.
- 23.6. In all other cases the limitation amounts in Clause 23.2 and Clause 23.3 will apply.

24. NOTICE OF LOSS AND/OR DAMAGE, TIME LIMIT

- 24.1. The Company shall be deemed prima facie to have performed the Services for the Goods, unless written notice of loss or damage and the general nature of such loss or damage has been given to or served on the Company or to its representative at the Delivery Address or Designated Address before or at the time of removal of the Goods in the custody of the Customer and/or Merchant and/or Person entitled to delivery thereof or, if the loss or damage is not apparent, within three consecutive days of delivery.
- 24.2. The Company shall be discharged from all liability whatsoever in respect of the Goods unless suit is brought in the proper forum and written notice thereof received by the Company within one (1) year of their delivery or the date when the Goods should have been delivered or the commencement of the cause of loss and/or damage or the expiration or sooner termination of the Services whichever is the earlier. In the event that such time period shall be found contrary to any convention or law compulsorily applicable and cannot be varied, the period prescribed by such convention or law shall then apply in that circumstances only.

25. GOVERNMENT ORDERS

The Company shall have liberty to comply with any orders, directions, regulations, requests or suggestions given by or received from the Government or Relevant Authority. Any disposition of the Goods pursuant to this Clause shall constitute completion of the Services by the Company, and the Goods thereafter shall be solely at the Customer's own risk and expense. The Customer shall bear and pay all duties, taxes, fines, imposts, expenses or losses incurred or suffered by reason thereof and shall indemnify the Company in respect thereof.

26. GENERAL AVERAGE

- 26.1. The Company may declare General Average, which shall be adjustable at any port or place at the option of the Company in accordance with the most recent York-Antwerp Rules and the New Jason Clause as approved by BIMCO and to be considered as incorporated herein and the Customer and/or Merchant shall provide such security as may be required by the Company in this connection.
- 26.2. Notwithstanding Clause 26.1 hereinabove, the Customer and/or the Merchant shall defend, indemnify and hold harmless the Company in respect of any claim (and any expenses arising therefrom) of a General Average nature which may be made on the Company and shall provide such security as may be required by the Company in this connection.
- 26.3. The Company shall be under no obligation to take any steps, including the exercise of any lien, whatsoever to collect security for General Average contributions due to the Customer and/or the Merchant.

27. COLLECT ON DELIVERY (COD) SHIPMENTS

Goods received with Customer's or other Person's instructions to Collect on Delivery (C.O.D.) by bank drafts or otherwise, or to collect on any specified terms by cash, bank drafts or otherwise, are accepted by the Company only upon the express understanding that it will exercise reasonable care in the selection of a bank, correspondent, carrier or agent to whom it will send such item for collection, and the Company will not be responsible for any act, omission, default, suspension, insolvency of such bank, correspondent, carrier or agent, nor for any delay in remittance or lost in exchange, during transmission or while in the course of collection.

28. WAIVER AND SEVERABILITY AND ASSIGNMENT

- 28.1. No failure or delay by the Company in exercising any right, power or remedy hereunder shall impair such right, power or remedy or operate as a waiver thereof, nor shall any single or partial exercise of the same precludes any further exercise thereof or the exercise of any other rights, powers or remedies. The rights, powers and remedies herein provided are cumulative and do not exclude any other rights, powers and remedies provided by law. In the event of any part of these Conditions being or becoming void, illegal or unenforceable, that part shall be severed from these Conditions to the extent that all the remaining parts shall remain in full force and be unaffected or impaired thereby.
- 28.2. Neither the Customer nor Company shall assign any of its rights or obligations hereunder.

29. NOTICES

- 29.1. Each notice, demand or other communication to be given or made under these Conditions shall be in writing and delivered by hand or sent by prepaid registered mail to the relevant party at its address or delivered or by email to the email address or by fax to the fax number set out in the Contract Documents (or such other address or fax number as the addressee has by five (5) consecutive calendar days' prior written notice specified to the other party).
- 29.2. Any notice, demand or other communication so addressed to the relevant party shall be deemed to have been (a) on the date of delivery if delivered by hand; or (b) two (2) business days after

the date of posting if sent by prepaid registered mail; or (c) if delivered by email or fax, when dispatched (with confirmed transmission report).

30. CONFIDENTIALITY

- 30.1. No party shall during the term of the Services and for a period of two (2) calendar years after expiration or sooner determination of the Services, except in the proper course of performing its obligations and duties herein, divulge to any third party whatsoever and shall use its best endeavours to prevent the unauthorised publication or disclosure of any Confidential Information whatsoever concerning the business of the other party or any of its dealings, transactions or affairs which may come to such party's knowledge during or in the course of fulfilling its obligations for the Services, provided that these provisions shall not apply to information which:-
- (a) can reasonably be demonstrated to be in the public domain without any breach of the provisions of these Conditions;
 - (b) was known to such third party prior to it being disclosed;
 - (c) is disclosed on a confidential basis to consultants or advisers of a party to assist that party in the carrying out these Conditions and/or the Services;
 - (d) is required to be disclosed by law;
 - (e) is disclosed in proceedings taken by such party for the enforcement of any rights or remedies under these Conditions; or
 - (f) is disclosed to the affiliates of such party (provided that such party shall ensure compliance by such affiliates of all the provisions of this Clause).
- 30.2. Neither party shall be entitled to publicise in any publication, presentation, announcement, or press release concerning the existence of these Conditions.
- 30.3. Each party shall limit access to the Confidential Information to those of its personnel for whom such access is reasonably necessary for the performance of these Conditions and who are under a duty of confidentiality to that party.

31. INTELLECTUAL PROPERTY RIGHTS

- 31.1. Subject to other provisions in these Conditions, the Company grants to the Customer a non-exclusive and non-transferable licence to use the Licensed Materials solely for the purposes of the Services. For the avoidance of doubt, the Customer is a mere licensee in relation to the Licensed Materials and shall have no proprietary interest over them whatsoever.
- 31.2. The licence to use the Licensed Materials shall terminate forthwith upon the termination of the Services.
- 31.3. The Customer shall strictly comply with all terms, conditions, instructions and procedures given or notified by the Company from time to time relating to the Licensed Materials, including the installation, use or updating of any software comprised in the Licensed Materials.
- 31.4. The Customer shall not vary, modify, decompile, disassemble or reverse-engineer any of software

comprised in the Licensed Materials.

- 31.5. The Customer agrees that the distribution of the Licensed Materials by the Customer is subject to the approval of the Company.
- 31.6. The Customer agrees that the use of the Licensed Materials should also be confined to a particular project and within the mutually agreed premises subject to the instruction of the Company.
- 31.7. The Customer agrees that the disclosure of the Licensed Materials should be confined to the Customer and its affiliates only.
- 31.8. The Customer shall promptly bring to the attention of the Company any improper or wrongful use of the Licensed Materials and at the Company's costs provide all assistance and information that the Company may reasonably require to defend and protect the Intellectual Property Rights over the Licensed Materials.

32. FORCE MAJEURE

- 32.1. Neither Party shall be deemed to be in breach of these Conditions, or otherwise be liable to the other party, by reason of any delay in performance or non-performance of any of its obligations hereunder to the extent that such delay or non-performance is due to any event of Force Majeure or which it has notified the other party; and the time for performance of that obligation shall be extended accordingly.
- 32.2. In the event of a party being delayed or prevented from performing its obligations due to an event of Force Majeure, such party shall:-
 - (a) give notice in writing of such delay or prevention to the other party forthwith or as soon as reasonably possible stating the commencement date and extent of such delay or prevention, the cause thereof and its estimated duration;
 - (b) use all reasonable endeavours to mitigate the effects of such delay or prevention upon the performance of its obligations under these Conditions and/or Services; and
 - (c) resume performance of its obligations as soon as reasonably possible after the removal of the cause of the delay or prevention.
- 32.3. If the Force Majeure prevails for a continuous period in excess of three (3) calendar months, the parties shall enter into bona fide discussions with a view of alleviating its effects, or to agree upon such alternative arrangements as may be fair and reasonable.

33. EVENTS OF DEFAULT

- 33.1. Each of the following events and circumstances shall be an Event of Default:
 - (a) the Customer fails to pay any sum payable to the Company for the Services rendered when due or otherwise in accordance with the Contracts for the Services;
 - (b) any representation, or warranty made or deemed to be made by the Customer or in connection with the Services proved to have been incorrect or misleading;

- (c) a petition is presented or a proceeding is commenced or an order is made or an effective resolution is passed for the winding up, insolvency, administration, reorganisation, reconstruction, dissolution or bankruptcy of the Customer or for the appointment of a liquidator, receiver, administrator, trustee, or similar officers of the Customer or of all or any part of its business or assets;
- (d) death, incapacity, limitation or any change in the constitution or status of the Customer.

34. EARLY TERMINATION

34.1. The applicable contracts for the Services may be terminated by the either party except specifically provided, as follows

- (a) upon the occurrence of an Event of Default or Potential Event of Default;
- (b) by giving to the other party a fourteen (14) clear calendar days written notice of breach by the other party of any of the terms of contracts for Services provided that the breach (if applicable of remedy) is not remedied within such fourteen (14) clear calendar days period or such longer period as the Company may approve;
- (c) subject to Clause 36.4, any amendment, revision and special waiver not accepted by the Customer or the Company is not in receipt of the notice of acceptance in writing from the Customer;
- (d) by agreement in writing between the Customer and the Company;
- (e) pursuant to Clause 21.4;
- (f) pursuant to Clause 25.

35. BANKRUPTCY, INSOLVENCY, WINDING UP OR FINANCIAL DEFAULT OF THE SHIPPING COMPANY

The Customer shall indemnify the Company and/or its agents, servants or assigns, for any claim, loss, expense, damage, liability or costs whatsoever (including but not limited to (a) any extra handling charges or fees charged or demanded by terminal operators, ports, container owners or any Relevant Authority as the conditions for release of the containers or the Goods; (b) demurrage, storage charges and penalties or other demands for the failure to pay these charges promptly; (c) any loss or damage whatsoever caused by the Shipping Company's instructions to its vessel not to berth or by the ports' refusal to allow the Shipping Company's vessel to berth) resulting from the presentation of a winding-up petition, commencement of a proceeding, an order being made or an effective resolution being passed for the winding up, insolvency, administration, reorganisation, rehabilitation, restructuring, dissolution or bankruptcy of the Shipping Company or the appointment of a liquidator, receiver, administrator, trustee, or similar officers of the Shipping Company or of all or any part of its business or assets of the Shipping Company.

36. MISCELLANEOUS

- 36.1. The Company shall have the right to enforce against the Merchant and the Customer 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. All and any advice, information or Services provided by the Company gratuitously is provided on the basis that the Company will not accept any liability whatsoever, whether in tort or bailment or otherwise. The Contract Documents together with these Conditions constitute the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements, undertakings, representations and warranties relating to any subject matter hereof. It is expressly declared that no variation, release, discharge or modification to these Conditions shall be effective unless made in writing and signed by the parties or unless made in accordance with the terms hereof.
- 36.2. The defences and exemptions and limits of liability provided for by these Conditions shall apply in any action against the Company whether such action be founded in contract, tort or bailment or otherwise.
- 36.3. A waiver by any party of any breach of any of these Conditions by the other party shall not prevent the subsequent enforcement of that term and shall not be deemed a waiver of any subsequent or other breach of that or any other provision hereof.
- 36.4. Any amendment, revision (including, without limitation, the Fees) and/or waiver of any provision of these Conditions and any waiver of any default under these Conditions shall only be effective if made in writing. Subject to the acceptance in writing of such amendment, revision and/or waiver within fourteen (14) clear calendar days after the receipt of the notice in writing from the Company, such amendment, revision and/or waiver shall take effect no later than one (1) calendar month after the acceptance in writing by the Customer.
- 36.5. Each party shall be responsible for its own costs and expenses for the negotiation, preparation, execution and implementation of these Conditions and/or for the purpose of the Services.
- 36.6. The Company shall have the right to set off any sum due from the Company to the Customer against any sum due from the Customer to the Company, whether under these Conditions or otherwise.
- 36.7. Except as set out in these Conditions, a person who is not a party to these Conditions shall have no right to enforce any provision of these Conditions under the Contracts (Right of Third Parties) Ordinance.

37. LAW AND JURISDICTION

These Conditions and the rights and obligations of the parties hereunder shall be governed by and construed in accordance with the laws of the Province of Ontario, Canada, and the federal laws of Canada applicable therein.

PART II: COMPANY AS AGENT

38. SPECIAL LIABILITY AND INDEMNITY CONDITIONS

- 38.1. 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 or for any other Services in relation to them. The Company 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.

- 38.2. The Company shall not be liable for the acts and omissions of such third parties referred to in these Conditions.
- 38.3. The Company when acting as 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.
- 38.4. Except to the extent caused by the Company's wilful default or wilful misconduct, the Customer shall defend, indemnify and hold harmless the Company in respect of all liability, loss, damage, costs (including all legal costs incurred) or expenses arising out of any contracts made in the procurement of the Customer's requirements in accordance with Clauses 38.1 and 38.2 upon the first written demand by the Company.

PART III: COMPANY AS PRINCIPAL

39. LIABILITY

- 39.1. Where, in respect of a transaction, the Company is held by a court of competent jurisdiction to be the carrier or warehouse operator, the Company shall be entitled to all the rights, immunities, exceptions and limitations conferred on the carrier or warehouse operator by any applicable law or legislation, and these Conditions shall be overridden to the extent that they are inconsistent with such rights, immunities, exceptions and limitations.
- 39.2. Where the Company contracts as principal and sub-contracts the performance of its Services and it can be proved that such loss of or damage to or in respect of the Goods arose or was caused whilst the Goods were in the care and/or custody of the sub-contractor, the Company shall have the full benefit of all rights, limitations and exclusions of liability available to such sub-contractor in the contract between the Company and such sub-contractor and in any law, statute or regulation and in these Conditions whichever benefits the Company. The liability of the Company shall not exceed the amount recovered, if any, by the Company from such sub- contractor.

40. AIR CARRIAGE

- 40.1. If the Company is or is deemed to be a carrier in respect of a carriage of Goods by air, the following notices are 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 that 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' timetables as scheduled stopping places for the route. The address of the first carrier is the airport of departure."

"The first carrier's name may be abbreviated on the face of the air waybill, the full name and its abbreviation being set forth in such carrier's tariffs, conditions of carriage, regulations and timetables. The first carrier's address is the airport of departure shown on the face of the air waybill. The agreed stopping places (which may be altered by carrier in case of necessity) are those places, except the place of departure and the place of destination, set forth on the face of the air waybill or shown in carrier's timetables as scheduled stopped places for the route. Carriage to be performed under the air waybill by several successive carriers is regarded as a single operation."

40.2. If the Company itself performs (instead of arranging for the performance of) Services, the Company is entitled:

- (a) to perform any local transportation of the Goods by any route or by any means;
- (b) to store, pack, unpack, load, unload or otherwise handle the Goods at any place or places and for any period of time; and

to do all such other acts as may be necessary or incidental thereto in the absolute discretion of the Company.

The Company may, but is not obliged to, depart or deviate from the Customer's instructions if in the opinion of the Company such departure or deviation is necessary or desirable in the Customer's interests or is otherwise expedient.

40.3. Notwithstanding any other provisions of these Conditions, the Company is not a common carrier and may in its absolute discretion refuse to offer its services to any Person.

41. LIMITATION FUND

At the Company's absolute discretion, 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.

42. BOTH TO BLAME COLLISION CLAUSE

If the vessel on which the Goods are carried (the carrying vessel) comes into collision with any other vessel or object (the non-carrying vessel or object) as a result of the negligence of the non-carrying vessel or object or the owner of, or charterer of or Person responsible for the non-carrying vessel or object and any act, neglect or default of the master, mariner, pilot or the servant of the Company in the navigation or in the management of the vessel, the Customer and/or Merchant undertakes to defend, indemnify and hold harmless the Company against all claims by or liability to (and any expense arising therefrom) any vessel or Person in respect of any loss of or damage to or any claim whatsoever of the Customer and/or Merchant paid or payable to the Customer and/or Merchant by the non-carrying vessel or object or the owner of, charterer of or Person responsible for the non-carrying vessel or object and set-off recouped or recovered by such vessel, object or Person against the Company, the carrying vessel or its owners or charterers.