



**FEDERATION OF MALAYSIAN  
FREIGHT FORWARDERS**

**STANDARD TRADING CONDITION 2003**

WISMA SFFLA , 23 , JALAN CEMERLANG ,  
42000 PORT KLANG , SELANGOR D.E. , MALAYSIA .  
TEL : 603 – 3165 3081  
FAX : 603 – 3165 3082  
E-MAIL : secretariat@fmff.net

## PART 1 DEFINITIONS

1. In these Conditions, the following expressions, except where the context otherwise requires or where it is otherwise stated, shall have the following meanings: -

- (i) “ 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;
- (ii) “ Conditions ”  
means the entire undertakings, terms, conditions and clauses embodied herein;
- (iii) “Company”  
is the Federation of Malaysian Freight Forwarders member trading under these Conditions;
- (iv) “ Customer ”  
means any person at whose request or on whose behalf the Company undertakes any business, or provides advice, information, or services;
- (v) “ Person ”  
includes any individual, persons or any Body or Bodies Corporate;
- (vi) “ Owner ”  
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;
- (vii) “ Services ”  
means any business undertaken or any advice, information or services provided by the Company,
- (viii) “ Dangerous Goods ”  
includes: -
  - A. dangerous goods as defined in the Merchant Shipping Ordinance 1952 ( as revised )

B. goods specified in the Customs and Exercise Act and Regulations; Port Authority’s ( Amendment ) Bye – Laws

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 harbour 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; and

D. empty receptacles which were previously used for the carriage Dangerous Goods unless such receptacles have been rendered safe;

(ix) “ Goods ”  
includes goods, wares, merchandise, cargo, articles of kind and any Container not supplied by or on behalf of the Company, or any part thereof, in respect of which the Company provides any Services;

(x) “ Container ”  
means freight container (including without limitation any container, flexitank, trailer, transportable tank, flat, pallet or any article used to consolidate goods) which may carry unique identification numbers and markings, as well as any equipment (including devices, which permit its ready handling) forming part thereof or connected thereto;

(xi) “ Multimodal Transport Operator ” shall have the same meaning as set out in the International of Freight Forwarders Associations

(xii) “ Owner ”  
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;

- (xiii) “ Electronic Data Interchange ” means the electronic transfer from computer to computer of commercial or administrative transactions using agreed standard to structure the transaction or message data;
- (xiv) “ Hague Rules ” means the provisions of the International Convention for the Unification of certain Rules of Law relating to Bills of Lading, signed at Brussels on August 25, 1924;
- ( xv ) “ 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 Aug 1924, as amended by the Protocol made on 23 Feb 1968;
- (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) “ Instructions ” means a statement of the Customer’s specific instructions;

**PART 11 HEADINGS**

Headings of clauses or groups of clauses are for indicative purposes only.

**PART 111 SCOPE OF APPLICATION**

- 1. (a) Where applicable, words importing the singular include the plural and words in the plural shall include the singular; words importing a gender includes every gender and references to persons include bodies corporate and unincorporated.

- (b) Any reference to any statute shall be deemed also refer to any statutory modification or re-enactment thereof or any statutory instrument, order or rules and regulations made thereunder.
- 2. (a) Save as otherwise expressly provided, any Services provided by the Company, whether gratuitously or otherwise, shall be subject to the provisions set out herein and these provisions are deemed to be incorporated into any agreement or arrangement between the Company and its Customer, including any agreement or arrangement concluded by means of Electronic Data Interchange.
- (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 1 (a) above,
  - (i) the provisions of PART 1V hereunder shall apply to all Services provided by the Company whether as agent or principal;
  - (ii) the provisions of PART V 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 V and those in PART 1V, the provisions of PART 1V shall apply to the extent that they are not inconsistent with those in PART V; and
  - (iii) the provisions of PART VI shall apply only to the extent that the Services are provided by the Company as principal. In the event of any inconsistencies between any provisions in PART VI and those

in PART 1V, the provisions in PART 1V shall apply to the extent that they are not inconsistent with those in PART V1.

- (d) Where a document bearing a title of or including “ bill of lading ” (whether or not negotiable ) 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.
  - (e) If any legislation is compulsorily applicable to any Services provided by Company, these Conditions shall as regards 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 and if any part of these Conditions is repugnant to such legislation to any extent such part shall regards such Services be void to that extent but no further.
  - (f) Every variation, cancellation or waiver of these Conditions or any part thereof must be in writing signed by a Chairman 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 prior to the commencement of the carriage of Goods the Customer in writing demands from the Company particulars of the identity, services or charges of persons instructed by the Company to perform part or all of the carriage the Company shall be deemed to be contracting as principal in respect of that part of the carriage in respect of which the Company fails to give such particulars demanded within 28 days of the Company’s receipt of such demand;
  - (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.
4. Without prejudice to the generality of Clause 3,
- (a) a charging by the Company of a fixed price for any Services of whatsoever nature shall not in itself determine or be conclusive evidence 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, shall not in itself determine or be conclusive 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 an agent where the Company procures the issue of a bill of lading or other document evidencing a contract of carriage between a person, 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, licenses, consular documents, certificates of origin, inspection, certificates and other services similar or incidental thereto.

**PART 1V  
GENERAL CONDITIONS**

**Customer's Obligations**

5. The Customer warrants that he is either the Owner or the authorized agent of the Owner of the Goods, and he is authorized 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.
6. The Customer shall be deemed to be competent and to have reasonable knowledge of matters affecting the conduct of his business, including terms of sale and purchase and all other matters relating thereto.
7. The Customer shall give to the Company sufficient and executable instructions.
8. If the Company's instructions are insufficient or inexecutable, the Company shall within the limits of its duty of care and diligence inform the Customer.
9. The Customer warrants that the description and particulars of the Goods are complete, accurate and correct.
10. Except where the Company has agreed in writing to pack the goods, the Customer warrants that the Goods are properly and sufficiently prepared, packed, stowed and marked, and that the preparation, packing, stowage, labeling and marking are appropriate to any operations or transactions affecting the Goods and the characteristics of the Goods.

**Special Conditions Relating To Particular Goods**

11. a. Except following instructions previously received in writing and accepted by the Company, the Company will not accept or deal with Goods of dangerous or damaging nature, nor with Goods likely to harbour or encourage vermin or other pests. If such Goods are accepted pursuant to special arrangement and then in the opinion of the Company they constitute

a risk to other Goods, property, life or health, the Company shall where reasonably practicable contact the Customer but reserves the right at the expense of the Customer to remove or otherwise deal with the Goods.

- b. If the Customer delivers to the Company or causes the Company to deal with or handle Dangerous Goods in breach of Clause 11(a) above, the Company shall not be liable whatsoever, and the Customer shall solely be liable, for any loss or damage whatsoever caused by or to the Dangerous Goods or howsoever arising in connection therewith or incidental thereto 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 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 or any liability whatsoever attaching to the Company.
12. No insurance will be effected except upon express instructions given in writing by the Customer and all such instructions effected by the Company unless specifically instructed otherwise by the Customer in writing are subject to the 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. Should the insurers dispute their liability for any reason whatsoever the insured shall have recourse against the insurers only and the Company shall not 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.

13. 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.

### **General Indemnities**

14. a. The Customer undertakes that no claim shall be made against the Company, its servants or employees of the Company which imposes or attempts to impose upon them any liability in connection with any services which are the subject of these Conditions and if any such claim should nevertheless be made, to indemnify the Company against all consequences thereof.

b. The Customer shall defend and hold harmless and keep the Company indemnified from and against all claims, costs and demands whatsoever and by whomsoever made or preferred in excess of the liability of the Company under the terms of the Conditions and without prejudice to the generality of this Clause this indemnity shall cover all claims costs and demands arising from or in connection with the negligence or breach of duty or other default of the Company, its servants, agents or other persons (including any independent contractors).

c. In this clause "contractor" includes direct or indirect sub-contractors and their respective servants or agents and "agents" includes sub – agents and their respective servants or agents.

15. The Customer shall warn the Company if any Goods which are the subject of any transaction to which these Conditions apply are liable to taint or affect other Goods; and the Customer shall indemnify the Company against any liability, loss, damage, costs or expenses incurred by the Company as a consequence of the Customer's failure to do so or his failure to do so in good time.

16. The Customer 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) or any person or vessel referred to herein caused directly or indirectly by the Customer of any person acting as servants, agents or independent contractors for or on behalf of either of them.

### **General Average**

17. The Customer shall indemnify the Company in respect of any claims of a general average nature, which may be made on it and shall provide such security as may be required by the Company in this connection.

### **Charges**

18. (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, counterclaim or set-off.

(b) When the Company is instructed to collect freight, duties, charges or other expenses from any person other than the Customer, the Customer shall make payment of the same to the Company on receipt from the Company of evidence of demand and a notice stating that payment has not been received (which notice shall be conclusive and binding on the Customer).

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

(d) Notwithstanding and without prejudice to Clause 18 (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 immediately or in accordance with the terms of such notice become due and payable.

**Rights of the Company**

19. The Company shall be entitled and the Customer hereby expressly authorizes the Company, except in so far as has been otherwise specifically agreed between the Company and the Customer, to enter into contracts on behalf of the Customer:-

- (a) for the carriage of Goods by any route or means or person;
- (b) for the storage, packing, transshipment, loading, unloading or handling of the Goods by any person at any place whether on shore or afloat and for any length of time;
- (c) for the carriage or storage of Goods in Containers or with other Goods of whatever nature; or
- (d) to do such acts as may in the opinion of the Company be reasonably necessary in the performance of its obligations in the interests of the Customer.

20. (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 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.

(c) 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 endeavours 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 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.

- (d) 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 costs 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.

(e) Without prejudice to Clause 19 and 20, 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:-

- (i) on giving 21 days' notice in writing to the Customer or where the Customer cannot be traced and reasonable efforts have been made to contact any parties who may

reasonably be supposed by the Company to have any interest in the Goods, of Goods or any part thereof which in the sole opinion of the Company cannot be delivered as instructed; or

- (ii) 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.
21. (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 28 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. For the avoidance of doubt, 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 remains outstanding.
- (b) Notwithstanding Clause 21 (a) above, when the Goods are liable to perish or deteriorate, the Company's rights 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.

22. The Company shall be entitled to retain and be paid all brokerages, commissions, allowances and other remunerations agreed to be customarily retained by or paid to freight forwarders.
23. 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**

24. (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 unless the Company has approved their suitability;
  - (iii) the unsuitability or defective condition of the Containers 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
    - (d) the Container not being sealed at the commencement of any carriage except where the

Company has agreed in writing to seal the Container.

- (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 24 (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 of quality.

#### **Limitation of Liability**

25. (a) Except insofar as otherwise provided by these Conditions, the Company shall be relieved of liability for any loss or damage if and to the extent that such loss or damage was caused by: -
- (i) the act or omission of the Customer, or person other than the Company acting on behalf of the Customer, or of the person from whom the Company took the Goods in charge;
  - (ii) insufficiency of the packing and/or marks and/or labels and/or numbers save where the Company had undertaken to carry out the packing, application of marks or labeling or numbering of the Goods;
  - (iii) handling, loading, stowage or unloading of the Goods by the Customer or any person acting on behalf of the Customer;
  - (iv) inherent vice of the Goods;
  - (v) strike, lock out, stoppage or restraint of labour, the consequences of which the Company was unable to avoid by the exercise of reasonable diligence;
  - (vi) any cause or event which the Company was unable to avoid and the consequences whereof the

Company was unable to prevent by the exercise of reasonable diligence.

The burden of proving that the loss or damage was due to one or more of the above causes or events shall rest upon the Company.

#### **Amount of Compensation**

26. 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 or for any other matter or things, shall not exceed: -

- (a) in respect of all claims other than those subject to the provisions of Clause 27 (b) below, the lesser of: -
  - (i) the value of the Goods lost, damaged, misdirected, misdelivered or in respect of which a claim arises; or
  - (ii) RM5.00 per gross kilogram of the said Goods
  - (iii) not exceeding RM 100, 000 in any event whatsoever in respect of any one claim, and
- (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.

27. For the purposes of Clause 27 and Clause 28, 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 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 price value or commodity exchange price, by reference to the normal value of Goods of the same kind and quality.

28. By special arrangement agreed in writing, the Company may accept liability in excess of the limits in sub-clauses above upon the Customer agreeing to pay the Company's additional charges for accepting such increased liability.

29. (a) The Company shall be discharged of any liability whatsoever unless: -

(i) notice of any claim is received in writing by the Company or its agents within 14 days after the date specified in ( b ) below; and

(ii) suit is brought in the proper forum and written notice thereof received by the Company within 9 months after the date specified (b) below.

(b) The date referred to in Clause 29 (a) above shall: -

(i) in the case of damage to Goods, the date of delivery of the Goods, and in the case of the 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.

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 ship-owners, lighterman, canal, railway or aircraft operators or other persons ) 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.

31. Without prejudice to Clause 19, 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.

32. Where there is a choice of rates according to the extent or degree of the liability assumed by persons carrying, storing or handling of the Goods, no declaration of value where optional will be made except under special arrangements previously made in writing.

## **PART V COMPANY ACTING AS A FORWARDING AGENT**

30. (a) As long as 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

**PART VI  
COMPANY CONTRACTING AS  
PRINCIPAL**

33. The Company is not a common carrier and deals on the basis of these Conditions alone. The Company reserves to itself a reasonable liberty as to the means, route and procedure to be followed in the handling, storage or transportation of Goods.

34. (a) When and to the extent that the Company has contracted as principal for the performance of any services, it undertakes to perform and/or in its own name to procure the performance of those services, and subject to always to the totality of these Conditions accepts liability for loss or damage to goods taken into its charge occurring between the time when it takes the Goods into its charge and the time when the Company is entitled to call upon the Customer or Owner to take delivery of the Goods.

(b) The Company shall be deemed to have taken the Goods into its charge when they have been received by the Company or have been released or handed over by the Customer or any person acting on behalf of the Customer to any person acting on behalf of the Company in accordance with any directions of the Company for the performance of the Customer's instructions.

35. Notwithstanding any other provision in these Conditions, 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 where the loss or damage occurred.

36. Notwithstanding the provisions of Clause 42, if the loss of or damage to the Goods occurred at sea or inland waterways, and the Owner, Charterer or Operator of the vessel establishes a limitation fund, the Company shall be limited to the proportion of the said limitation fund allocated to the Goods.

**Air Cargo–Warsaw Convention**

37. If the Company acts as 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 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 those places (other than the place 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”.

**Both–to–Blame Collision Clause**

38. 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 in the navigation or in management of the vessel, the merchant will indemnify the carrier against all loss or liability to the other or non – carrying vessel or her Owners 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.

### **Miscellaneous**

39. Any notice served by post in relation to the Agreement or the Services hereunder shall be deemed to have been received on the third day following the day on which it was posted to the address of the recipient last known to the Company. If it is a facsimile transmission by the Customer or the Owner to the Company shall be deemed to have been received at the time of actual receipt of the Company. This Clause shall not without prejudice to any other arrangement or agreement between the Company and the Customer or Owner relating to communications by means of Electronic Data Interchange.
40. The rights and remedies conferred on the Company under this Conditions shall be cumulative and shall be in addition to and without prejudice to any rights or remedies otherwise available to the Company.
41. (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 tort or in any other form.
- (b) Notwithstanding any provisions to the contrary contained herein, Services rendered by the Company to the Goods of fragile nature, goods of perishable nature or goods of special nature such as live animals solely at the Customer's risk without any liability whatsoever to the Company.
- (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. 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 increased.

- (d) Unless a special agreement is made as to the rate of carriage, the Company shall have the option of charging by value, weight or measurement.

### **Jurisdiction and Law**

42. Malaysia courts shall have exclusive jurisdiction to deal with any claim or dispute which has arisen or may arise out of or in connection with the Services of the Company.
43. Any claims or dispute arising out of or in connection with these Conditions shall be governed and construed in accordance with Malaysian law.

**ANNEXED TO THE STANDARD  
TRADING CONDITIONS**

**RULES GOVERNING ELECTRONIC  
DATA INTERCHANGE**

**1. Objective and Definitions**

1.1 These Rules are intended to facilitate the provision of Services by the Company to its Customers through the use of Electronic Data Interchange by electronically sending and receiving data agreed formats in substitution for conventional paper-based documents. These Rules seek to assure that such transactions are not legally invalid or unenforceable by reason only of their being effected by means of available electronic technologies for the benefit of the parties.

1.2 Terms defined in the Standard Trading Conditions to which these Rules form an Annex but not specifically defined herein shall, unless the context otherwise requires, have the same meanings when used in these Rules.

1.3 In these Rules, the following expressions, except where the context otherwise Requires or where it is otherwise stated, shall have the following meanings: -

“Adopted Protocol” means the method for the interchange of Messages based on the [EDIFACT] standard for the presentation and structuring or the communication of Messages, or such other standard as may be specifically agreed upon in writing by the parties, and more particularly defined in the User manual;

“Data Log” means a complete and chronologically sequential record, automatically generated, of all the Messages sent

“Message” means a communication relating to the provisions of the Services which is structured in accordance with the Adopted Protocol and includes, where the context permits, any part of such communication; also means both EDI Messages and other Messages.

“EDI Messages” means data structured in accordance with an agreed international standard in a computer readable format and transmitted by electronic, optical or wireless means through the Services provided by ‘DAGANG NET TECHNOLOGIES’ network or any services provided by any third party for the transmission, receipt and retrieval of Messages in connection with the Subscriber’s trading activities.

“writing” includes a duly authenticated Message.

1.4 In these Rules, references to “electronic” include a reference to mechanical, electromechanical, optical, electro-chemical or other medium for the storage or conveyance of transmitted Messages.

and received by a party and maintained in accordance with the rules stipulated in the User manual;

## **2. Scope of Application**

- 2.1 These Rules shall apply to all Messages between the Company and its Customers using the Adopted Protocol in relation to the provision by the Company of any Services to which the Standard Trading Conditions apply.
- 2.2 Except as expressly provided, these Rules do not apply to govern any other relationships (contractual or otherwise) in the context of which Messages are communicated and, in particular, do not apply to the underlying commercial transactions relating to the provision of the Services, which shall be governed by the Standard Trading Conditions.

## **3. Systems Operations and Confidentiality**

- 3.1 The Company and the Customer agree that each of them shall: -
- (a) at its own expense, test and maintain its equipment, software and services necessary to effectively and reliably transmit and receive Messages;
  - (b) ensure that no changes are made to the systems operations which impair the mutual capabilities of the parties to communicate as contemplated by these Rules without providing reasonable prior notice of the intended change;
  - (c) implement and maintain security procedures, including any specified in the User Manual, to protect Messages and their records against misuse, improper or unauthorized access, alteration or loss;
  - (d) that its Messages are correct and complete in form and secured in accordance with the provisions of the User Manual; and
  - (e) ensure that intermediaries employed to retransmit Messages are instructed not to make unauthorized change in the data content and that the data content of such Messages is not disclosed to any unauthorized person.

3.2 No information contained in any Message communicated under these Rules shall be considered confidential unless by operation of law or by designation in the User Manual or in the Message.

3.3 In the circumstances stipulated in the User Manual or if so agreed between the parties, the parties shall apply special protection (such as encryption or other means listed in the User Manual or agreed between the parties) to the Messages behind transmitted. Unless the parties otherwise agree, the recipient of Messages so protected shall ensure that at least the same level of protection used by the sender is applied for any further transmission.

## **4. Verification of Messages**

4.1 All Messages must identify the sender and recipient in accordance with the User Manual which must include a means of verifying the formal completeness and authenticity of the Message by some means agreed upon in writing by the parties or as provided in the Adopted Protocol.

## **5. Integrity of Messages**

5.1 Any Message transmitted in compliance with these Rules shall be deemed to have been received when accessible to the intended recipient in the manner designated in the User Manual. Subject to Rule 5.2, each party accepts the integrity of all Messages and agrees to accord these the same status as would be applicable to information sent via paper documents.

5.2 Where there is proof that a Message has been or is likely to have been corrupted, garbled, incomplete, incorrect or not in good order, it shall not be acted upon by the recipient.

5.3 If the sender has been able to identify the circumstances mentioned in Rule 5.2, he shall retransmit the Message as soon as practicable with an indication that it is a corrected Message. In the absence of such re-transmission, the recipient's version of the Message shall prevail.

5.4 If it is the recipient who is able to identify the circumstances in Rule 5.2, he shall

inform the sender (if identifiable from the received Message) as soon as practicable and shall not act on the Message until he has received the correct Message or confirmation that the received Message is correct. In the absence of such notice to the sender by the recipient, the sender's version of the Message shall prevail.

5.5 Notwithstanding that the sender is responsible and liable for the completeness and accuracy of a Message, the sender will not be liable for the consequences of an incomplete or incorrect Message if the error is or should be reasonably obvious to the recipient.

5.6 If the recipient has reason to believe that the Message is not intended for him, he should take reasonable action to inform the sender immediately and should delete the information contained in the Message from his system but not the Data Log.

## **6 Acknowledgement of Receipt of Messages**

6.1 Unless otherwise designated in the User Manual or the sender of a Message has expressly requested the recipient to acknowledge receipt of the Message, the receipt of the Message need not be acknowledged by the recipient.

6.2 Where an acknowledgement of receipt of a Message is designated in the User Manual or the sender of a Message has expressly requested the recipient to acknowledge receipt of a Message, the following provisions shall apply: -

- (a) any acknowledgement of receipt of such a Message shall be given in such form, by such method and within such time limit as may be specified in User Manual or as may be expressly agreed between the parties;
- (b) where the User Manual does not specify the form, method and/or time limit for the acknowledgement of receipt of a Message, or the sender has agreed with the recipient that the acknowledgement is to be given in a particular method and/or by a certain time limit, the acknowledgement may be given as soon

as practicable after receipt of the Message by the recipient by: -

(i) any communication by the recipient, automated or otherwise; or

(ii) any conduct of the recipient;

sufficient in the circumstances then existing to indicate to the sender that the Message has been received.

(c) if the sender has not received an acknowledgement within the time period as mentioned in the foregoing provisions of this Rule 6, he should take an immediate action to obtain it. If, despite such an action, an acknowledgement is not received within the extended period as stipulated by the sender, the sender should advise the recipient of the non-receipt in accordance with the procedures laid down in the User Manual. If he does so, he is entitled to regard the Message as null and void upon giving notice to that effect to the recipient without any further delay.

(d) the recipient shall not act on such Message until the acknowledgement is sent in accordance with the foregoing provisions; and

(e) the cost incurred by the recipient in sending such an acknowledgement shall be borne by the sender.

## **7. Confirmation of Content**

7.1 The sender of a Message may, in addition to the acknowledgment, request the recipient to advise him whether the content of the Message has been received and the form it has been received in, without prejudice to any subsequent consideration or action that the contents may warrant. A recipient is not authorized to act on such a Message until he has complied with the request of the sender. The sender shall bear the cost of the recipient in sending the confirmation of content / form.

7.2 The confirmation referred to in Rule 7.1 above shall be given in such manner and

within such time period as the parties may expressly agree. Where the sender has not agreed with the recipient that the confirmation is to be given in particular form or by a particular method or by a particular time limit, confirmation may be given as soon as practicable after receipt of the Message by the Recipient by: -

- (a) any communication by the recipient, automated or otherwise; or
- (b) any conduct of the recipient, sufficient to indicate to the sender that the contents / form of the Message has been received.

7.2 If the sender has not received the requested confirmation advice within the time limit mentioned in the foregoing provisions of this Rule 7, he should take action either to obtain the confirmation or to re-transmit the Message. If, despite such action, the recipient fails to confirm the contents / form of the Message as required, the sender shall treat the Message as null and void upon giving notice to that effect to the recipient.

## **8. Validity and Enforceability**

8.1 The parties agree that valid and enforceable obligations may be created by the communication of Messages in compliance with these Rules. The parties expressly waive all rights to object to the validity of a transaction solely on the ground that the communication between the parties occurred through the use of Electronic Data Interchange.

8.2 Without regard to the absence of any writings and written signatures, to the extent permitted by law, the records of Messages maintained by the parties (including the Data Log) shall be admissible and may be used as evidence of the information contained therein. The parties agree not to contest the admissibility of the Data Log as evidence in any legal, administrative, judicial or other proceedings insofar as it has been maintained in accordance with the provisions of the User Manual.

8.3 Unless otherwise agreed between the parties or required by law, a contract concluded through the use of Electronic Data

Interchange under these Rules shall be deemed to be formal when the Message sent as acceptance of an offer has been received in accordance with Rule 5.1.

## **9. Storage of Data**

9.1 Each party shall ensure that a Data Log is maintained without any modification in accordance with the provisions of the User Manual.

9.2 The parties shall maintain the Data Log unchanged and protected from corruption for a period of seven years or for any such other period as agreed upon by the parties or mandated by the law in the country where the Data Log is maintained.

9.3 The Data Log may be maintained on computer media or other suitable means provided that the data can be easily retrieved and presented in readable form, whether as a print-out or in any other visible format.

9.4 Each party shall ensure that the person responsible for the data processing system he relies on is available to certify that the Data Log and any reproduction made from it is correct.

## **10. Third Party Service Providers**

10.1 Messages may be transmitted to each party directly or through any third party service provider ( " Intermediary " ) and processed, stored or logged by such Intermediary. A party is obliged to pay the costs of each service it requires from its own Intermediary and may change this Intermediary upon [ 2 ] months' notice in writing provided the other party accepts the change in writing.

10.2 A party using the services of a third party provider in the communication or processing of Messages shall be responsible for any acts, failures or omissions of that provider in the provisions of the said services.

## **11. Force Majeure**

11.1 A party shall not be responsible or liable in breach of these Rules by reason of any delay in performance or non-performance of its obligations if such delay in performance or non-performance is caused

by an act of God or by any other cause beyond human control (including but not limited to any mechanical, electronic or communication failure).

## **12 Invalidity and Severability**

12.1 In the event of a conflict between any provisions of these Rules and any law, Regulation or decree, the provision of these Rules so affected shall be null and void or shall, where practicable, be curtailed and limited to the extent necessary to bring it within the requirements of such law, regulation or decree. Such a provision shall be severable from and shall not render null and void other provisions of these Rules.

## **13. Notices**

13.1 Save in the case of communications by means of Electronic Data Interchange, The notice provisions contained in the Standard Trading Conditions shall apply to any notice given by one party to another under or pursuant to these Rules.

## **14. Law and Jurisdiction**

14.1 These Rules and any claim or dispute arising out of or in connection with these Rules shall be governed by and construed in accordance with Malaysian law and shall be subject to the exclusive jurisdiction of the Malaysian Courts.