



## APLL Standard Trading Conditions

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## **Part I: DEFINITIONS, APPLICATIONS AND GENERAL CONDITIONS**

### **I. General**

#### **1. Application.**

- 1.1. The provisions of Part I of these Conditions shall apply to all such Services provided by the Company whether as agent or principal.
- 1.2. The provisions of Part II of these Conditions shall only apply to the extent that such Services are provided by the Company as agents. In the event of any inconsistencies between any provisions in Part II and those in Part I, the provisions in Part II shall prevail.
- 1.3. The provisions of Part III of these Conditions shall only apply to the extent that such Services are provided by the Company as principals. In the event of any inconsistencies between any provisions in Part III and those in Part I, the provisions in Part III shall prevail.

#### **2. Subject to Clauses 2.1, 2.2 and 2.3 below, all Services or activities provided by the Company whether gratuitous or otherwise are subject to these Conditions which are deemed to be immediately incorporated into any agreement or arrangement between Company and the Customer and which are also deemed to prevail over any standard conditions of contract of the Customer.**

- 2.1. If the Company and the Customer have signed a specially negotiated agreement or contract, these Conditions shall continue to apply, but such negotiated agreement shall be paramount and prevail in so far as its terms are inconsistent with these Conditions but no further.
- 2.2. In the event the Company renders Services, and any document(s) containing terms and conditions governing such Services is issued by or on behalf of the Company, including but not limited to a forwarder's cargo receipt, bill of lading, sea waybill, air waybill (whether issued in paper or electronic form), the terms and conditions set forth in such document(s) shall govern those Services to the extent that they are inconsistent with these Conditions.
- 2.3. In the event the Company renders Services that are validly governed by such other general terms and conditions, including but not limited to the Allgemeinen Deutschen Spediteursbedingungen - ADSp - (German Freight Forwarders' General Terms and Conditions), such other general terms and conditions shall govern those Services to the extent that they are inconsistent with these Conditions.
- 2.4. Where the Customer uses or accesses any Information System operated by the Company, then the Company's user terms if any (as published on the relevant Information System or available upon request from the Company) shall govern the use or access of such Information System to the extent that they are inconsistent with these Conditions.
- 2.5. If any legislation is compulsorily applicable to any Services, 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 overridden or nullified by such legislation to any extent, such part shall as regards such Services be overridden or nullified to that extent and no further.
- 2.6. Every variation, cancellation or waiver of these Conditions or any part thereof must be in writing and duly signed by an authorised signatory of the Company (including such other formalities as may be required under any applicable law). 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.

- 2.7. Notwithstanding anything to the contrary these Conditions shall not apply to inland ramp-to-ramp motor and rail carrier transportation services that is provided or arranged by the Company in the United States of America and in Central and South America and governed by Company's separate terms and conditions governing such services.
3. All Services are provided by the Company as agents on behalf of the Customer except in and to the extent of the following circumstances where the Company provides the Services as principal:
  - 3.1. where the Company performs any Carriage or storage of Goods, but only to the extent that the Carriage or storage of Goods is performed by the Company itself or its servants, employees and agents, and the Goods are in the actual custody and control of the Company;
  - 3.2. To the extent that the Company expressly agrees in writing to act as a principal; or
  - 3.3. To the extent that the Company is bound by any previous decision or ruling by a court of law in a particular jurisdiction to be acting as a principal, and save where provided in this Clause 3, the Company shall not assume any liability as a principal by reason, whether partially or solely, of any foreign judgment or order of court where the Company may have previously been found to have acted as principal in such judgment or order.
4. Without prejudice to the generality of Clause 3,
  - 4.1. The charging by the Company of an inclusive price for any Services shall not in itself determine or be evidence that the Company is acting as an agent or a principal in respect of such Services;
  - 4.2. The supplying by the Company of their own or leased equipment and/or facilities, shall not in itself determine or be evidence that the Company is acting as an agent or a principal in respect of such Services;
  - 4.3. The arrangement by the Company for Goods to be forwarded, carried, transported, stored or otherwise handled together, or in consolidation, with any other goods shall not in itself determine or be evidence that the Company is acting as an agent or a principal in respect of such Services;
  - 4.4. The Company acts as an agent and never as a principal 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; and
  - 4.5. The Company acts as an agent and never as a principal when providing Services in respect of or relating to customs, requirements, taxes, export filings and compliance, licenses, consular documents, certificates of origin, inspection, certificates, documentation management, and other similar services that may be provided by the Company from time to time.

## II. Definitions

5. In these Conditions
  - 5.1. "APL Logistics Group" means APL Logistics Ltd and any of its direct or indirect subsidiaries, affiliates, associates or agents.
  - 5.2. "Authority" means a duly constituted legal, regulatory, judicial, non-judicial or administrative



person or officer, acting within its legal powers and exercising jurisdiction within any nation, state, municipality, port or airport.

- 5.3. "Carriage" means the whole or any part of carriage, loading, unloading and handling of Goods.
- 5.4. "Company" means an entity within the APL Logistics Group which provides any Services upon and subject to these Conditions.
- 5.5. "Conditions" mean all the provisions set out herein in these Standard Trading Conditions.
- 5.6. "Container" includes any 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.
- 5.7. "Customer" means any person at whose request or on whose behalf the Company provides any Services and includes the shipper, holder, consignee, receiver of the Goods, any Person owning or entitled to the possession of the Goods and/or anyone acting on behalf of or as principals of such Person. It is the responsibility of the Customer to provide notice and copy(s) of these Conditions to its agents or representatives.
- 5.8. "Dangerous Goods" include goods which are or may become of a dangerous, hazardous, noxious, inflammable, radioactive or damaging nature, goods likely to taint or affect other goods, goods liable to cause contamination, soiling and remedial cleaning expenses to be incurred, goods likely to harbour or encourage vermin or other pests, and goods that may cause delay or detention, or such materials specified as hazardous or dangerous by IATA (International Air Transport Association), ICAO (International Civil Aviation Organization), IMO (International Maritime Organisation), the U.S. Department of Transportation, or any applicable government department or other relevant organizations, or under any applicable international convention or national laws.
- 5.9. "Goods" means the cargo in relation to which the Services are provided by the Company or to which these Conditions otherwise relate to, and includes any Container, packaging or pallet supplied by or on behalf of the Customer.
- 5.10. "Hague Rules" means the provisions of the International Convention for the Unification of Certain Rules relating to Bills of Lading signed at Brussels on 25 August 1924, including the amendments by the Protocol signed at Brussels on 23 February 1968 and such other amendments that may be introduced from time to time, but only if such amendments are compulsorily applicable to Carriage covered by these Conditions.
- 5.11. "Information" means data, messages, advice, and/or information (including electronic data) in any form.
- 5.12. "Information System" means any computer hardware, computer software, website, portal, communication lines and Information processing technologies operated and/or used by the Company, the Customer or any third party used in connection with the Services (including any system which sends or receives Information, or is otherwise used for Information interchange).
- 5.13. "Instructions" means a statement of the specific requirements from the Customer, an Authority and/or any other Person entitled to give them.
- 5.14. "Montreal Convention" means the Convention for Unification of Certain Rules for International Carriage by Air, signed at Montreal on 28 May 1999 and such other amendments that may be



introduced from time to time, but only if such amendments are compulsorily applicable to Carriage covered by these Conditions.

- 5.15. "Person" means an individual, corporation or other legal entities.
- 5.16. "Services" means any business or activity undertaken or any advice, information or services provided and/or procured by the Company for the Customer's benefit including but not limited to the provision or arrangement of any Carriage, warehousing, storage, logistics and cargo management services and customs brokerage.
- 5.17. "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, and such other amendments that may be introduced from time to time, but only if such amendments are compulsorily applicable to Carriage covered by these Conditions.

### **III. Obligations of Customer**

- 6. The Customer warrants that he accepts these Conditions not only for himself but also as authorised agent for and on behalf of the shipper, consignee and receiver of the Goods, any Person owning or entitled to possession and/or control of the Goods and anyone acting on their behalf (to the extent that any of such above-mentioned Persons is not the Customer).
- 7. The Customer warrants that he has reasonable knowledge of matters affecting the conduct of his business, and any of his own customer's or principal's businesses, including but not limited to the terms of sale and purchase of the Goods and all other matters relating thereto.
- 8. The Customer and any Person acting on the Customer's behalf shall give lawful, sufficient and executable Instructions to the Company, including but not limited to special or specific handling precautions or attention where required for Goods of any special nature.
- 9. The Customer further warrants that:
  - 9.1. It is either the legal owner of the Goods or the authorised agent of the legal owner of the Goods or has or may have an interest (whether legal or equitable) in the Goods, and that it is legally authorised to engage and is engaging the Services of the Company in respect of the Goods, including acceptance of these Conditions not only for itself but also (where applicable) as agent for and on behalf of the legal owner of the Goods, where applicable, the shipper, consignee and receiver of the Goods and anyone acting on their behalf;
  - 9.2. The description, classification, weights, volumes, values and any other particulars of the Goods provided to the Company for any purpose whatsoever are complete, accurate and correct;
  - 9.3. The Goods are properly marked, labelled, placarded, stuffed, prepared, stored and packed in a manner appropriate to enable effective delivery without delay and also to withstand any reasonable and ordinary operations, transportation via relevant mode or modes, handling, storage or transactions affecting the Goods and the characteristics of the Goods, except where the Company has agreed in writing to pack the Goods or has accepted Instructions in respect of such Services;
  - 9.4. In the event of containerised transport, the Goods are suitable for Carriage in Containers, unless the Company has approved the suitability;



- 9.5. In the event of all other non-containerised transport, including but not limited to rail, road, sea or air, the Goods are suitable for that particular means of transport;
  - 9.6. Any Containers provided by the Customer to carry the packed Goods are properly prepared and suitable for the Carriage of the Goods to the intended destination and are free of defects, except where the Container has been supplied by or on behalf of the Company in which case, by accepting the Container, the Customer shall be deemed not to have any objections in respect of the suitability or condition of the Containers;
  - 9.7. Any Containers used for Carriage are sealed at the commencement of Carriage except where the Company has agreed to seal the Containers;
  - 9.8. It has complied with all applicable conventions, codes laws and any governmental regulations relating to the nature, condition, preparation, packing, handling, storage and Carriage of the Goods;
  - 9.9. The Goods and their Carriage do not contravene any applicable laws or infringe the intellectual property or any other rights of any Persons;
  - 9.10. Unless otherwise declared, the Goods are not Dangerous Goods, and even if declared and accepted by the Company, that such Dangerous Goods will not damage or cause loss to any other Goods, the means of transport or other equipment, or cause injury to any individual, animal or livestock.
  - 9.11. It will timeously provide and keep current all documents, information and assistance required by the Company or otherwise required to comply with the requirements of any Authorities;
  - 9.12. The only person who may make a claim or bring proceedings against the Company is the person who directly contracted with the Company for the performance of the Services; and
  - 9.13. The Customer shall ensure to the best of its abilities that the consignee and/or any other person designated or entitled to take delivery of the Goods (where applicable) shall properly take delivery within the time and at the place for taking delivery specified by the Company and will comply with all applicable formalities and procedures in doing so, including but not limited to, where applicable, the payment of all necessary charges, taxes and duties and surrendering of all relevant documents.
10. The Customer shall be jointly and severally liable with any other Person who may have any interest in the Goods and/or anyone that is acting on behalf of the Customer for the discharge of all the Customer's obligations under these Conditions. Such obligations include but are not limited to the settlement of any liability of the Customer and the obligation to pay the Company any sums payable by the Customer, which upon demand have not been paid.

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

11. Unless otherwise previously agreed in writing, the Customer shall not:
  - 11.1. Deliver to the Company or cause the Company to deal with or handle Dangerous Goods; and/or
  - 11.2. Name the Company as a consignee on any Bill of Lading, warehouse receipt, forwarder's cargo receipt, delivery ticket, or other transportation, storage or document of title.
12. The Customer must declare to the Company when Services are requested in respect of Dangerous Goods



and, in the event such Dangerous Goods are accepted by the Company, the Customer shall provide a full declaration in writing of their nature and contents prior to delivery of the Goods to the Company, failing which the Company may reject such Dangerous Goods and deal with such Dangerous Goods in accordance with Clause 12.2 below, or in accordance with such manner that the Company is entitled to under any convention or law that may be applicable. All such Dangerous Goods will be tendered with appropriate shipping papers, manifests and other documentation, as required by, and packaged in accordance with, any and all applicable laws, rules, regulations codes and conventions.

- 12.1. In any event, and regardless of whether the Company, its servants, employees, agents or sub-contractors are or ought to be aware of the nature of the Dangerous Goods, the Customer shall be liable for any loss or damage whatsoever arising in connection or caused by or to the Dangerous Goods and the Customer shall defend, indemnify and hold harmless the Company against all penalties, claims, liabilities (whether civil, criminal or otherwise), damages, costs and expenses whatsoever arising in connection with or incidental to such loss or damage and the Dangerous Goods may without notice be destroyed, in accordance with Clause 12.2, below or otherwise dealt with at the sole discretion of the Company, or any other person in whose custody they may be at the relevant time without compensation to and at the cost of the Customer.
  - 12.2. Whether or not the Company agrees in writing to accept Dangerous Goods or if the Goods tendered are found to be Dangerous Goods, and subsequently, in the sole opinion of the Company, (i) such Dangerous Goods are deemed to constitute a risk to other goods, property, life or health or (ii) owing to legal, administrative or other obstacles whether as to their carriage, discharge or otherwise they may be detained or cause any other property or person to be detained, they may without notice be destroyed or otherwise dealt with at the expense of the Customer without compensation or any liability whatsoever attaching to the Company.
13. The Customer undertakes not to tender for transportation any Goods that require temperature, ventilation and/or atmosphere control without previously giving written notice to the Company of their nature and particular temperature, ventilation and/or atmosphere range settings to be maintained, and the Customer shall not cause such special requirements to be reflected on any transport document without such prior written notice to the Company. Without such written notice, the Company shall be entitled to treat such Goods as ordinary Goods regardless of whether the Company, its servants, agents or sub-contractors are or ought to be aware that the tendered Goods require temperature, ventilation and/or atmosphere control. In the case of a temperature, atmosphere controlled and/or modified atmosphere Container stuffed by or on behalf of the Customer, the Customer further undertakes that:
- 13.1. The Container and Goods have been properly pre-cooled or pre-heated or otherwise prepared as appropriate;
  - 13.2. The Goods have been properly packed or stuffed in the Container; and
  - 13.3. The Container's thermostatic or other controls have been properly set and checked by or on behalf of the Customer.
  - 13.4. If the above requirements are not complied with, or if Company has not agreed in writing to provide Services consistent with Customer's instructions regarding temperature and atmospheric ranges, the Company shall not be liable for any loss or damage to the Goods caused by such non-compliance.
14. No insurance shall be effected except upon express Instructions given in writing by the Customer and accepted by Company in writing. All insurances effected by the Company are subject to the usual exceptions and conditions of the policies of the insurance company or underwriters taking the risk. Unless



otherwise agreed in writing, the Company shall not be under any obligation to effect a separate insurance on each consignment but may declare it on any open or general policy. Should the insurers dispute their liability for any reason whatsoever the insured shall have recourse against the insurers only and the Company shall not be under any responsibility or liability whatsoever in relation thereto notwithstanding that the premium upon the policy may not be at the same rate as that charged by the Company or paid to the Company by its Customers. The Company acts solely as an agent for the Customer in effecting insurance and does so subject to the limits of liability contained in Part X of these Conditions herein notwithstanding that loss or damage was caused by the Company's negligence or default including any failure to place any insurance or the appropriate insurance. For the avoidance of doubt, Company is not and does not hold itself out as carrying on business as an insurer or insurance broker or insurance agent.

15. Except under special arrangements previously made in writing, the Company shall not accept or deal with, and Customer shall not tender, Goods that require special handling regarding carriage or security whether owing to their nature or otherwise, including but not limited to bullion, coins, precious stones, jewellery, valuables, antiques, works of art, livestock, or plants, and the Customer shall not cause such special handling to be reflected on any transport document without such prior written arrangement with the Company. 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.
16. Except in accordance with express instructions previously received in writing and accepted in writing by the Company, the Company shall not be obliged to make any declaration for the purposes of any statute, convention or contract as to the nature or value of any Goods or as to any special interest in delivery.
17. Unless otherwise previously agreed in writing or otherwise provided for under the provisions of a document signed 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 and the Company's liability shall not exceed that provided for in respect of mis-delivery of Goods.
18. Unless otherwise previously agreed in writing that the Goods shall depart or arrive by a particular date, the Company accepts no responsibility for departure or arrival date of Goods, whether or not any such delay is caused by the negligence of the Company, its agents or sub-contractors. The Company accepts no liability for the Customer's failure to comply with any licence, permission, sale contract or credit agreement caused by such delay, whether or not such matters were known or should have been known to the Company.

#### **V. General Indemnities**

19. The Customer shall defend, indemnify and hold harmless the Company against all liability, loss, damage, costs and expenses arising from or out of (i) the nature of the Goods unless caused by the Company's negligence, (ii) the Company acting in accordance with the Customer's Instructions, or (iii) a breach of warranty or obligation by the Customer or (iv) the negligence of the Customer or (v) the loss, damage, contamination or soiling caused by the Customer to property (including but not limited to Containers) of the Company, any agent or sub-contractor and for any demurrage and detention arising therefrom whether before, during or after the Carriage of the Goods; or (vi) any duties, taxes, penalties, imposts, levies, deposits and outlays of whatsoever nature levied by any Authority in respect of the Goods and/or Container, and for all liabilities, payments, fines, costs, expenses, loss and damage sustained by the Company in connection therewith, unless caused by the Company's negligence; or (vii) any contracts made pursuant to Part II Clause 67 except to the extent caused by the Company's negligence. This





indemnity shall commence from the date when the Services were requested, whether or not the Goods have been pillaged, stolen, lost, damaged or destroyed.

20. Advice and information, in whatever form it may be given, are provided by the Company for the Customer only and the Customer shall defend, indemnify, and hold harmless the Company for all liability, loss, damage, costs, and expenses arising out of any other person relying on such advice or information. Except under special arrangements, advice and information which are not related to Instructions accepted by the Company are provided gratuitously and without liability.
21. The Customer undertakes that no claim shall be made against any directors, officers, servants, sub-contractors, consultants, agents or employees of the Company nor any other company within the APL Logistics Group which imposes, or attempts to impose upon any of them any liability whatsoever in connection with the Services and/or the Goods, and if any such claim should nevertheless be made, to indemnify the Company against all consequences thereof including any costs incurred by the Company therefrom.
  - 21.1. Without prejudice to the foregoing, every sub-contractor and the Companies within the APL Logistics Group, together with all their respective directors, officers, servants, sub-contractors, agents or employees of the Company ("Relevant Third Parties") shall have the benefit of all provisions herein, as if such provisions were expressly for their benefit. In entering into a contract for Services, the Company, to the extent of those provisions, does so not only on its behalf, but also as agent and trustee for the Relevant Third Parties.
  - 21.2. The Customer shall defend, indemnify and hold harmless the Company from and against all claims, costs and demands whatsoever and by whomsoever made in connection with the Services and/or the Goods to the extent that such claim, cost or demand is in excess of the liability of the Company under the terms of these Conditions. Without prejudice to the generality of this clause, this indemnity shall cover all claims, costs and demands in connection with the Services and/or the Goods whether arising from or in connection with the negligence of the Company, its servants, sub-contractors or agents.
  - 21.3. In this clause, "sub-contractor(s)" includes direct and indirect sub-contractor(s) and their respective servants and agents.
22. The Customer shall be liable for the loss, damage, injury, contamination, soiling, detention or demurrage before, during and after the Carriage, suffered in respect of any property (including, but not limited to, Containers) of the Company or by any Person, vessel or vehicle involved in the Carriage, that is caused by the Customer or owner of the Goods or any person acting on behalf of either of them or for which the Customer is otherwise responsible.

## **VI. Charges**

23. Full charges shall be considered completely earned on receipt of the Goods by the Company or upon commencement of Service by or for the Company (whichever is earlier) which shall be paid and are non-returnable in any event. Charges are payable based on particulars furnished by the Customer. If such particulars are incorrect, the Customer shall be liable for the correct charges, and any expenses incurred in connection with such correction, including examining, weighing, measuring or valuing the Goods.
24. The Customer shall pay to the Company all sums in full, in cash or as agreed, immediately when due without deduction or deferment, on account of any claim, counterclaim or set-off.
25. When the Company is instructed to collect freight, duties, charges or other expenses from any person



other than the Customer, the Customer shall remain responsible to make payment for the same, on receipt from Company of evidence of demand and non-payment (for whatever reason by such other person when due).

26. On all amounts overdue to the Company, the Customer shall pay to the Company interest, calculated from the date such amounts are overdue until payment thereof, at the rate of 1 percent per month, or if such rate of interest is prohibited by law, such maximum rate of interest allowed under the said law.
27. Payment of charges to any party other than the Company shall not be deemed payment to the Company, and shall be made at the Customer's own risk.
28. No credit is granted to Customer unless expressly agreed in writing by the Company.
29. Notwithstanding and without prejudice to Clause 26, in the event that the Customer fails to pay any sum due to the Company within 5 days from the date any sum is due, the Company shall be entitled at any time thereafter by written notice to the Customer declare that:
  - 29.1. all credit terms (if any) in respect of all or any part of the Services rendered pursuant to these Conditions shall be cancelled, whereupon the same shall be cancelled; and
  - 29.2. all sums payable by the Customer to the Company in respect of all or any part of the Services rendered pursuant to these Conditions have become due and payable, whereupon the same shall immediately or in accordance with the terms of such notice become due and payable.
30. Any dispute as to the amount or accuracy of any invoice issued by the Company shall be raised by the Customer within 14 days from the date of the invoice, failing which, the Customer is deemed to have conclusively accepted that the invoice is complete and accurate.
31. Quotations given are subject to withdrawal or revision. Unless otherwise agreed in writing, the Company shall, even after acceptance, be at liberty to revise quotations or charges with or without notice in the event of changes outside the Company's control including but not limited to changes in currency exchange rates, rates of freight, insurance premiums or any charges applicable to the Services provided or in respect of the Goods.

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

32. The Company shall be entitled, except insofar as has been otherwise agreed in writing, to perform any Services itself and/or enter into contracts on behalf of itself or the Customer and with or without notice to the Customer:
  - 32.1. For the Carriage of Goods (and the provision of any other Services) by any route, means, mode or Person, and under any conditions of service whatsoever.
  - 32.2. For the Carriage of Goods of any description whether containerised or not, on or under the deck of any vessel.
  - 32.3. For the storage, packing, transhipment, stuffing, consolidation, deconsolidation, loading, unloading or handling of Goods by any Person at any place whether on shore or afloat and for any length of time.
  - 32.4. For the Carriage or storage of Goods, whether containerised or not, and with other goods of whatever nature.



- 32.5. For the performance of its own obligations and to do such acts as in the opinion of the Company may be necessary or incidental to the performance of the Company's obligations.
- 32.6. For any other ancillary services with respect to the Carriage, storage, management and/or transportation of Goods.
33. The Company shall be entitled but under no obligation, to depart from the Customer's Instructions in any respect if in the sole discretion of the Company such departure is justified in light of all relevant considerations and it shall not thereby incur any additional liability whatsoever, other than its liability (if any) hereunder. Delivery or disposal of Goods to or at the instruction of any Person presenting any forged or fraudulent document purporting to be a document entitling such Person to take delivery or possession or otherwise give instruction for the disposal of Goods shall be deemed due delivery of the Goods in proper performance of the Company's obligations, provided that the person releasing the Goods to or disposing the Goods did not actually know that : (i) such document was forged or fraudulent and (ii) such person in fact had no right or authority of possession or disposal of the Goods.
34. 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.
35. If at any time the performance of the Company's obligations, in the 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 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 disposal at any place which the Company may deem in its sole opinion safe and convenient, whereupon the responsibility of the Company in respect of the Goods shall wholly cease and the Goods shall be deemed to have been delivered by the Company in proper performance of the Service. The Customer shall be responsible for any additional costs of Carriage to and delivery and storage at such place and all other expenses incurred by the Company and the Customer shall on demand pay the Company for such additional costs. The Company may, at its absolute discretion, require the Customer to prove its entitlement to the Goods and/or provide a letter of indemnity or such other security on terms to the Company's satisfaction before releasing the Goods to the Customer or in accordance with the Customer's instructions.
36. If delivery of the Goods or any part thereof is not taken by the Customer at the time and place when and where the Company, or any Person whose Services the Company makes use of, calls upon the Customer to take delivery thereof under the Services, the Company shall be entitled to store the Goods in the open or under cover at the sole risk and expense of the Customer. The Company's liability in respect of such Goods shall wholly cease and the cost of such storage and all other expenses and liability whatsoever paid or payable or incurred or which may be incurred by the Company shall be paid by the Customer on demand.
37. Notwithstanding Clauses 35 and 36 of these Conditions, the Company shall be entitled but under no obligation, at the expense of the Customer payable on demand and without any liability to the Customer, to sell or dispose the Goods in accordance with this Clause 37 or in accordance with such manner that the Company is entitled to under any convention or law that may be applicable:
- 37.1. On giving 7 days' notice in writing to the Customer, all Goods or any part thereof which in the sole opinion of the Company cannot be delivered as instructed, or
- 37.2. Without notice to the Customer, Goods which have perished, deteriorated or altered, or are in



immediate prospect of doing or which has caused or may be reasonably expected to cause loss or damage to any person or property or to contravene applicable laws or regulations.

38. Unless such rights of lien are prohibited by any applicable law, the Company shall have a particular and general lien on all Goods, documents relating to Goods and such items in its possession including but not limited to the Customer's Containers or transportation equipment or vehicles, for all sums due at any time from the Customer (including but not limited to expenses incurred by the Company to preserve or exercise its lien) and on giving 7 days' notice in writing to the Customer, shall be entitled to sell or dispose of such Goods or documents at the expense of the Customer under Clause 37, above, and without liability to the Customer and apply the proceeds in or towards the payment of such sums. Company reserves all its rights to exercise such rights of lien, as modified or amended as may be necessary in order to comply with any applicable law.
39. The Company shall be entitled to retain and be paid all brokerages, commissions, allowances and other remunerations customarily retained by or paid to freight forwarders.
40. The current "**Both to Blame Collision Clause**" as adopted by BIMCO is incorporated in and deemed to form part of these Conditions.

#### **VIII. Containers**

41. If a Container has not been packed or stuffed by the Company, the Company shall not be liable for loss of or damage to the contents if caused by:
  - 41.1. The manner in which the Container has been packed or stuffed;
  - 41.2. The unsuitability of the contents for Carriage in Containers;
  - 41.3. The unsuitability or defective condition of the Container provided that where the Container has been supplied by or on behalf of the Company, this paragraph shall only apply if the unsuitability or defective condition (a) arose without any negligence on the part of the Company; (b) would have been apparent upon reasonable inspection by the Customer or person acting on Customer's behalf; or (c) arose as a result of the peculiarity of the Goods and such peculiarity was not made known to the Company in writing; or
  - 41.4. the Container not being sealed at the commencement of the Carriage.
42. 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 covered by Clause 41 above.
43. 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 or any particular type or quality. Where the Company provides a Container to the Customer, it does so as owner or as an agent for the owner of the Container. The Customer must satisfy itself as to the condition and suitability of the Container at the time of receipt. The Customer warrants that it will return the empty Container in a clean and cargo worthy condition to the nominated delivery address within the time specified by the owner of the Container. The Customer agrees and acknowledges that the Customer will pay any Container detention charges to the Company as owner or agent for the owner of the Container. Charges related to container use, including per diem, and Detention charges will immediately commence the day after the Container is due to be returned to owner of the Container at the nominated delivery address. Copies of the relevant provisions of the applicable Container owner's tariff can be obtained from the Company or its agents upon request.
44. The Customer will indemnify the Company for all charges and liabilities arising in connection with the use



of any Container or Containers including but not limited to repair costs, cleaning costs and/or detention charges. The Customer's indemnity will include all costs, including administrative and/or legal fees, incurred in recovering from the Customer any amounts owing, pursuant to this indemnity.

**IX. General Liability**

45. Except insofar as otherwise provided by these Conditions, the Company shall not be liable for any loss or damage whatsoever and howsoever arising from:
- 45.1. The act or omission of the Customer or any Person (other than the Company) acting on Customer's behalf,
  - 45.2. Compliance with the Instructions given to the Company by the Customer, or any other Person entitled to give them,
  - 45.3. Insufficiency of the preparation, packing, storage, labelling or marking of the Goods, except where such service has been provided by the Company,
  - 45.4. Handling, loading, stowage or unloading of the Goods by the Customer or any Person (other than the Company) acting on Customer's behalf,
  - 45.5. Inherent vice of the Goods,
  - 45.6. Riots, civil commotions, strikes, lockouts, stoppage or restraint of labour from whatsoever cause,
  - 45.7. Fire, flood or storm,
  - 45.8. Act of war or terrorism,
  - 45.9. The breakdown of, accident to, failure or interruption of or reduction in the main electrical supply to the Company and/or sub-contractor; or
  - 45.10. Any cause which the Company could not avoid and the consequences whereof it could not prevent by the exercise of reasonable diligence.
46. Unless such limitation is prohibited under applicable law, the Company shall not in any circumstances whatsoever and howsoever arising, including without limitation any negligence on the part of the Company, its servants and/or agents, be liable for loss or damage howsoever caused to property other than the Goods themselves or any special, exemplary, punitive, incidental, loss of profits, indirect or consequential loss or damage, loss of market share or the consequences of any delay or deviation, even if the Company had been notified or should be deemed to have been notified of such potential loss or damages.

**X. Amount of Compensation**

47. In the event that the Company issues any document or contract of Carriage as referred to in Clause 2.2 which contains any provision(s) that limits the Company's liability to the Customer, the relevant limitation amounts set out therein shall apply. In all other cases, the limitation amounts in this Part X will apply to the fullest extent allowed under any applicable law. In the event that such limitation amounts in this Part X shall be found contrary to any convention or law compulsorily applicable and cannot be varied, the limitation amounts prescribed by such convention or law shall then apply in that circumstance only.
48. Except insofar as otherwise provided by these Conditions, the liability of the Company (if any), howsoever



arising, and notwithstanding that such liability shall have arisen from the neglect or default of the Company shall not exceed the following:

- 48.1. In respect of physical loss of or damage to or mis-delivery of the Goods in respect of warehousing or transportation logistics services, including any loss or damage due to unreasonable delay (subject to Clause 18, above), not exceeding the lesser of: (i) the manufacturer's cost of the Goods and pro-rated transportation costs; (ii) the reasonable cost of repair in the case of physical damage; (iii) 2 Special Drawing Rights ("SDR") per gross kg or 666.67 SDR per package or cargo unit for shipments to and from locations other than the United States; (iv) US Dollars Five Hundred (US\$ 500.00) per package or cargo unit for shipments to or from the United States of America; (v) US Dollars Five Hundred (US\$ 500.00) per cubic meter where the Goods cannot be categorised as package and/or cargo unit; (vi) any international convention or national law providing for such limits of compensation that may be applicable to any such mode of carriage; or (vii) the Charges paid or payable by the Customer for the particular consignment of Goods.
- 48.2. In respect of any claims related to the loss of or damage of the Goods while the Company is performing warehousing services, Company shall be entitled to an annual damage and inventory shrinkage allowance of  $\frac{1}{4}$  of 1% (0.25%) of the greater of: (i) the value of the Goods stored; or (ii) annual throughput (total of receipts and shipments), for which in the case of loss of or damage to Goods for any reason or mysterious disappearance howsoever caused, the Company shall not be liable (the "Shrink Allowance"). Subject to the foregoing Shrink Allowance, in the case of Goods lost or damaged caused by Company, the manufacturer's cost of the Goods shall be the measure of damages, but in no instance shall Company's liability exceed: (i) 200 times the base storage rate on a package, cube, or per cwt basis; or (ii) US Dollars Twenty-Five cents (US\$0.25) per pound, whichever is lesser.
- 48.3. In respect of any claims related to the loss of, delay (subject to Clause 18, above) or damage suffered in respect of customs agency or brokerage services, not exceeding the lesser of: (i) US Dollars Fifty (US\$ 50.00) per affected item; (ii) the manufacturer's cost plus pro-rated transportation costs of the Goods; or (iii) the pro-rated customs brokerage or agency charges for the affected item, subject to a maximum cap of US Dollars Five Thousand (US\$5,000.00) per occurrence.
- 48.4. In respect of physical loss of or damage to the Customer's owned or leased Container or vehicles or property, 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 charges paid or payable by the Customer to the Company for the particular consignment of Goods.
- 48.5. In respect of physical loss of or damage to property of any form other than that described in Clause 48.1, 48.2 and 48.3, but not exceeding the lesser of: (i) the value of the property lost or damaged; (ii) the reasonable cost of repair in the case of physical damage; or (iii) the charges paid or payable by the Customer to the Company for the particular consignment of Goods.
- 48.6. In respect of all other claims, not exceeding 20% of the charges paid or payable by the Customer to the Company for the particular Services requested and agreed upon.
49. In no event shall the Company's cumulative liability exceed US\$100,000.00 per occurrence arising from a common cause.
50. By special agreement in writing prior to the commencement of Services and on payment by Customer of



additional charges, Company may agree to increase the amount of compensation that may be claimed, save that such compensation shall not exceed the replacement cost of the Goods or the agreed value, whichever is the lesser.

#### **XI. Notice of Loss, Time Bar**

51. The Company shall be discharged of any and all liability whatsoever unless:
- 51.1. Notice of any claim, such notice being a condition precedent to any liability on the part of the Company, is received in writing by the Company or its agent within seven (7) days after the date specified in Clause 52 below, and
- 51.2. the Company shall be discharged of any liability whatsoever unless suit is brought in the proper forum within 9 months after the date specified in Clause 52 below.
52. The date referred to in Clause 51 above shall:
- 52.1. In the case of damage to Goods, the date of delivery of the Goods and in the case of loss of the Goods, the date that the Goods should have been delivered;
- 52.2. In the case of delay or non-delivery of the Goods, the date that the Goods should have been delivered; or
- 52.3. In any other case, the event giving rise to the claim.
53. 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 circumstance only.

#### **XII. General Average and Salvage**

54. The Customer shall defend, indemnify and hold harmless the Company in respect of any claims for General Average or salvage contribution that may be made on the Company, irrespective of whether the Charges are pre-paid or not. The Customer shall provide such security as may be required by the Company for General Average or salvage contribution promptly upon the Company's first written demand and in a form acceptable to the Company.

#### **XIII. Miscellaneous**

55. Any notice served by post in relation to or in connection with the Services shall be conclusively 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. Any notice sent by facsimile transmission by the Customer to the Company shall be conclusively deemed to have been received at the time of actual receipt by the Company. This clause shall be without prejudice to any other agreement or arrangement between the Company and the Customer relating to communications by means of electronic means.
56. The defences and limits of liability provided for by these Conditions shall apply in any action against the Company whether such action be founded in contract or in tort (including negligence where applicable) or in whatsoever form.
57. The waiver by the Company of a breach or default of any of the provisions set out in these Conditions shall not be construed as a waiver of any subsequent breach of the same or other provisions herein nor shall any delay or omission on the part of the Company to exercise or avail itself of any right power or



privilege that it has or may have hereunder operate as a waiver of any breach or default by the Customer. Any waiver, to be effective, shall be in writing.

58. In these Conditions: (i) unless the context otherwise requires, words importing the singular include the plural and vice versa; (ii) words importing a gender include every gender; (iii) references to persons include any individual, body corporate or unincorporated and any other entity; (iv) references to Clauses are to clauses of these Conditions; (v) clause headings are for convenience only and do not affect the interpretation of these Conditions; and (vi) whenever the words "include", "includes" or "including" are used in this Addendum, they will be deemed to be followed by the words "without limitation".
59. The rights and remedies conferred on the Company under these Conditions shall be cumulative and shall be in addition to and without prejudice to any rights or remedies otherwise available (whether at law or in equity) to the Company.
60. The Company shall have the option of charging by value, weight or measurement, at its sole discretion.
61. The rates published herewith are for the conveyance to all parts of the world of Goods consisting of ordinary merchandise; the Customer is responsible for the payment of any increase in rates, freights, premiums or other charges which may be imposed after the commencement of the transit. Works of art and other goods of high value, goods out of proportion in bulk to their weight such as bicycles, perambulators, feathers, bamboo-furniture or hollow glass, may be accepted at rates which are available from the Company on request. Customs duties, local taxes and charges, portage and local delivery expenses are additional to the rates for Carriage unless otherwise stated. All rates and charges when payable abroad are liable to be slightly increased.

#### **XIV. Jurisdiction and Law**

62. These Conditions and any claim or dispute arising out of or in connection with the Services of the Company shall be:
  - 62.1. Subject to the laws of the Republic of Singapore and the exclusive jurisdiction of the Singapore courts, save as provided for in Clauses 62.2, 62.3 and 62.4.
  - 62.2. In respect of Services provided in the United States of America (including Carriage to, from or within the United States of America), are subject to United States law and the exclusive jurisdiction of the United States Federal Courts of New York, save that each party acknowledges and agrees that any dispute is likely to involve complicated and difficult issues, and therefore the parties knowingly, intentionally, irrevocably and unconditionally waive any and all rights each of them may have to a trial by jury in respect of any dispute.
  - 62.3. At the Company's sole option, the Company may also commence proceedings against the Customer in any other foreign court of competent jurisdiction or forum, whether concurrently or otherwise, regardless of the existence of proceedings in one or more jurisdictions.
  - 62.4. Notwithstanding other provision in these Conditions, in respect of Services provided in China (including Carriage to, from or within China), these Conditions are subject to the laws of the Republic of Singapore and may be submitted to the China International Economic and Trade Arbitration Commission (CIETAC) for arbitration, which shall be conducted in accordance with the CIETAC's arbitration rules in effect at the time of applying for arbitration. The seat of arbitration is Shanghai, People's Republic of China. The arbitral award is final and binding upon both parties.

#### **XV. Amendments**





63. The Company may unilaterally amend these Conditions at any time by publishing the amendments on the Company's website at [www.apllogistics.com/StandardTradingConditions](http://www.apllogistics.com/StandardTradingConditions). All contracts concluded by the Company and the Customer after such publication shall be subject to the amended Conditions.

## **PART II: COMPANY AS AGENT**

### **XVI. Special Liability and Indemnity Conditions**

64. To the extent that the Company acts as an agent, the Company does not make or purport to make any contract with the Customer for the Carriage, storage or handling of the Goods nor for any other physical service in relation to them and acts solely on behalf of the Customer in securing such services by establishing contracts with third parties so that direct contractual relationships are established between the Customer and such third parties, whether or not the Customer is identified in the contract with the third parties.
65. The Company shall not be liable for the acts and omissions of such third parties referred to in Clause 64, above.
66. The Company shall not be responsible for any accident or for any act neglect or default howsoever arising whether wilful or otherwise on the part of its agents or those with whom it contracts in respect of the Goods to be forwarded, whether they are carriers by land, sea or air (whether shipowners, lightermen, canal, railway or aircraft operators or others) or warehouse keepers or other persons. The Company shall not be responsible for any money paid or remitted by it on behalf of the senders to any Persons in respect of the Goods to be forwarded, whether for the purpose of paying duties or charges in respect of the Goods or otherwise. All the general and special exemptions stated in this condition shall apply although the particular rates or charges made by the Company to the senders or persons forwarding the Goods may not be identical with the amounts paid by it to such agents, contractors or other persons.
67. Without prejudice to Clause 32, the Company, when acting as an agent, has the authority of the Customer to enter into contracts on such terms as may be commercially necessary or expedient, 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. The Company shall also be entitled to delegate on any items, its authority to any other Person, in whole or in part.
68. The Company only forwards Goods subject to the contracts, terms, conditions and regulations of the various persons, companies or Authorities into whose possession the Goods may pass.
69. The Customer shall defend, indemnify and hold harmless the Company in respect of all liability, loss, damage, costs, or expenses arising out of any contracts made in the procurement of the satisfaction of the Customer's requirements.
70. Without prejudice to other methods by which Company may charge Customer, Customer expressly agrees that Company may in its discretion charge Customer an inclusive sum, such that the difference between the amount charged by Company and the amount charged by the third party will represent Company's remuneration or commission or income. The Company shall also be entitled to retain and be paid all brokerages, commissions, allowances and other remunerations customarily retained by, or paid to, freight forwarders, whether paid by Persons related to the Company or otherwise.

## **PART III: COMPANY AS PRINCIPAL**

### **XVII. Special Liability Conditions**

71. To the extent that the Company contracts as principal for the performance of the Customer's Instructions,



the Company undertakes to perform or in its own name to procure the performance of the Customer's Instructions and subject to the provisions of these Conditions shall only be liable for the loss of or damage to the Goods occurring from the time that the Goods are taken into its charge and custody until the time of delivery. For the avoidance of doubt, the Company shall have full liberty to perform the Customer's Instructions itself or to procure on any terms whatsoever and with anybody the performance of the whole or any part of the Customer's Instructions.

72. Where the Company contracts as a principal and sub-contracts the performance of the Company's Services and it can be proved that the loss of or damage to or in respect of the Goods arose or was caused whilst the Goods were in the care 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 the liability of the Company shall not exceed the amount recovered, if any by the Company from sub-contractor.
73. Notwithstanding other provisions 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 applicable to the stage of carriage during which such loss or damage occurred, the provisions of which:
  - 73.1. Cannot be departed from by private contract, to the detriment of the claimant, and
  - 73.2. Would have applied if the claimant had made a separate and direct contract with the actual provider of the particular service in respect of that service or stage of carriage where the loss or damage occurred and received as evidence thereof any particular document which must be issued if such international convention or national law shall apply.
  - 73.3. For the avoidance of doubt, where the stage of carriage during which loss or damage occurred cannot be determined, the Company's liability shall be determined by the provisions of these Conditions.
74. Notwithstanding other provisions in these Conditions, if it can be proved that the loss of or damage to the Goods occurred at sea or inland waterway and the provisions of Clause 72 of these Conditions do not apply, the Company's liability shall be limited to those set out in the Hague Rules and the Company shall be entitled to rely on all defences, exemptions or limitations provided by carriers by the Hague Rules. Reference in the Hague Rules to carriage by sea shall be deemed to include reference to carriage by inland waterways and the Hague Rules shall be construed accordingly.
75. Notwithstanding the provisions of Clauses 72, 73 and 73.3, if the loss 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.

#### **XVIII. Air Carriage**

76. If the Company acts as a principal in respect of a Carriage of Goods by air, the following notice is hereby given:
  - 76.1. "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 Warsaw Convention and Montreal Convention govern and in most cases limit 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."