

Trading Terms and Conditions

1. DEFINITIONS AND INTERPRETATIONS

1.1 In these Conditions, the following words and expressions have the following meanings unless the context otherwise requires:

“Company”	means Gateway Global Logistics (HK) Limited, a member of Hong Kong Association of Freight Forwarding and Logistics Limited trading under these Conditions.
“Conditions”	means the entire undertakings, terms, conditions and clauses embodied herein and includes the Company’s terms and conditions printed on any written Instructions.
“Customer”	means any person at whose request or on whose behalf the Company provides the Services.
“FIATA”	means the International Federation of Freight Forwarders Associations.
“FIATA Air Waybill”	means the form of neutral air waybill together with the conditions governing such air waybill (1996) published by FIATA and recommended by FIATA for use by forwarders who choose to act in the capacity of a (contracting) carrier.
“FIATA Multimodal Transport Bill of Lading”	means the FIATA form of multimodal transport bill of lading together with the standard trading conditions governing such bill of lading (1992) for use by forwarders who choose to assume liabilities as a (contracting) carrier.
“Goods”	means all or any part of the goods in respect of which the Services are or are to be provided by the Company.
“Guadalajara Convention”	means the Convention supplementary to the Warsaw Convention, for the unification of certain rules relating to international carriage by air performed by a person other than the contracting carrier signed at Guadalajara on 18 September 1961.
“Hague Rules”	means The International Convention for the Unification of Certain Rules of Law relating to Bills of Lading signed at Brussels on 25 <sup>th</sup> August 1924.

“Hague-Visby Rules”	Means The International Convention for the Unification of Certain Rules of Law relating to Bills of Lading signed at Brussels on 25 <sup>th</sup> August 1924 (as amended by the Brussels Protocols 1968 and 1979).
“Instructions”	means statements of the Customer’s specific requirements, whether oral or in writing and includes without limitation the instructions specified on the shipper’s instructions and other forms of transport documents of the Company such as the Company’s house air waybill or house bill of lading.
“Montreal Convention”	means the Convention for the Unification of Certain Rules for International Carriage by Air signed at Montreal on 28th May 1999.
“Owner”	means all and any of the following persons: the owner, shipper, consignee of the Goods (including any packaging, containers and equipment therefor), and any other person who is or may become interested in or otherwise entitled to the possession of the Goods, and anyone acting on behalf of any of the persons aforesaid.
“Rights and Defences”	includes all and any rights, remedies, defences, exemptions of liabilities, limitations of liabilities, liberties, immunities and benefits of whatever nature and howsoever acquired.
“Services”	means any and all business undertaken by the Company including the provision or procuring the provision of any advice, information and services whatsoever (including without limitation any advice, information or services of or relating to any of the following: forwarding, carriage, transportation of goods (in each case whether international, regional, cross-border or local and whether by sea or air or land or any combination thereof); storage, loading, unloading, packing, unpacking, stuffing, un-stuffing, consolidation, de-consolidation, warehousing, distribution, collection, delivery, inventory and management control, labeling, repacking, reorganization, other processing, tracing and tracking and other handling of goods; order handling, documents preparation and customs brokerage; and in each case services ancillary or incidental thereto).

“Warsaw Convention” means The Convention for the Unification of Certain Rules relating to International Carriage by Air signed at Warsaw on 12th October 1929 or that Convention as amended at The Hague, 28<sup>th</sup> September 1955.

1.2 References to statutory provisions shall be construed as references to those provisions as respectively amended or re-enacted or as their application is modified by other provisions from time to time and shall include any provisions of which they are re-enactments (whether with or without modification).

1.3 Unless the context requires otherwise, words importing the singular include the plural and vice versa, words importing a gender include every gender, references to persons include any body corporate or unincorporated, and references to Clauses are to Clauses of these Conditions. The headings are inserted for convenience only and shall not affect the construction of these Conditions.

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

1.5 No omission or delay on the part of the Company in exercising its rights shall operate as a waiver thereof, nor shall any single or partial exercise by the Company of any such right preclude the further or other exercises thereof or the exercise of any other right which it has. The rights and remedies of the Company provided in these Conditions shall be cumulative and not exclusive of any rights or remedies otherwise provided by law.

1.6 Each of the provisions of these Conditions is severable and distinct from the others and if at any time one or more of such provisions is or becomes invalid illegal or unenforceable, the validity, legality and enforceability of the remaining provisions of these Conditions shall not in any way be affected or impaired thereby.

## 2. GENERAL

2.1 Any and all Services whether gratuitous or otherwise shall be provided by the Company subject to these Conditions and each of these Conditions shall be deemed to be incorporated in and to be a condition of any agreement between the Company and the Customer, to the exclusion of all other terms and conditions furnished by the Customer or the Owner and/or any other persons on their behalf to the Company. Should any Customer wish to contract with the Company otherwise than subject to these Conditions, special arrangements can be made subject to revised charges having been agreed and paid in advance by the Customer to the Company and subject to such arrangements having been reduced

into writing and signed by the Customer and a duly authorized officer on behalf of the Company accepting the same. The Company has the absolute discretion to accept or reject such arrangements and its decision shall be final and conclusive and binding on the Customer. Save as aforesaid these Conditions or any part thereof shall not be waived or varied in any respects. For the avoidance of doubt, any and all Services provided by the Company gratuitously will be provided on the basis that the Company will not accept any liability of whatsoever nature and howsoever arising. The Services or any part of the Services shall be deemed to be provided gratuitously if provided by the Company free of charge (other than disbursements and out of pocket expenses).

- 2.2 If any legislation is compulsorily applicable to any Services or any part of the Services, these Conditions shall, as regards such Services or any part thereof, 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 and Defences or as an increase of any of its responsibilities or liabilities under such legislation, and, if any part of these Conditions be repugnant to such legislation to any extent, such part shall as regards such Services or any part thereof be overridden to that extent but not further or otherwise and be substituted by such extent as stipulated in and permitted by such legislation.

### 3. CONTRACTUAL STATUS OF THE CUSTOMER

- 3.1 The Customer entering into any transaction or business including but not limited to the provision of the Services with the Company hereby expressly warrants to the Company that the Customer is either the Owner or the authorized agent of the Owner and that the Customer accepts or as the case may be is authorized to accept and do accept these Conditions not only for itself but also as agent for the Owner. Where the Customer accepts these Conditions as agent for the Owner, the Customer also accepts personal liability in respect of the terms and conditions in these Conditions, which shall not prejudice the rights of the Company against the Owner. Any and all representations, warranties, undertakings, agreements, obligations (including obligations to pay), liabilities, responsibilities and indemnities expressed or implied to be made, given and assumed by the Customer in or under these Conditions are or shall be deemed to be made given and assumed by the Customer jointly and severally with the Owner.
- 3.2 The Customer agrees and warrants that any and all Rights and Defences available to the Company may be enforced or raised by it against the Customer and the Owner jointly or each of them singly.

### 4. CONTRACTUAL STATUS OF THE COMPANY

- 4.1 The Company is a freight forwarding agent whose principal business is to act as agent in arranging for the transportation and/or shipment of goods on behalf of its customers. The Company reserves to itself the discretion to provide the Services or any part of the Services as a principal and/or to procure as an agent

the provision of the Services or any part of the Services by third party.

- 4.2 Notwithstanding any provisions to the contrary in these Conditions, the Company acts as a principal in respect of the Services or any part of the Services if and only if (i) the Company issues and signs its own house air waybill or house bill of lading naming the Company as a principal and expressly endorsing thereon a notice “THE COMPANY ACTS NOT AS AGENT BUT AS CARRIER” with separate terms and conditions embodied in it in which case such separate terms and conditions shall be paramount in governing the relationship between the Customer and the Company insofar as such terms and conditions are inconsistent with or repugnant to these Conditions AND (ii) the Goods are in its actual custody and control and the Services or part of the Services are being performed by the Company itself. Save as aforesaid, the Company shall act or conclusively be deemed to act as agent for the Customer in respect of the provision of the Services or any part of the Services.
- 4.3 Without affecting the generality of Clause 4.2, for the avoidance of doubt, it shall not be construed that any Services or part of the Services are provided by the Company other than as an agent of the Customer by reason of any one or more of the followings:
- (a) the Company issuing its own transport documents including its own house air waybill or air consignment note or house bill of lading or cargo receipt;
  - (b) the Company charges an inclusive price;
  - (c) the arrangements by the Company for the Goods or any part of the Goods to be forwarded, carried, transported, stored or otherwise handled together or in consolidation with other goods;
  - (d) the Company supplies its owned or leased equipment or facilities.
- 4.4 In addition to and without affecting the generality of Clause 4.2, the Company acts as an agent:
- (a) where the Company procures the issue of a third party bill of lading or air waybill or other transport documents including but not limited to cargo receipt containing or evidencing a contract of carriage between a third party and the Customer and/or other person(s) named by the Customer (whether or not the same is expressly signed or issued by the Company as agent of the third party); or
  - (b) when the Company provides the Services or any part of the Services in respect of or relating to customs clearance or other requirements, taxes,

licences, consular documents, certificates of origin, inspection, other certification and other services similar or incidental thereto.

5. THE COMPANY'S AUTHORITY

5.1 The Customer consents and hereby expressly authorizes the Company to enter into (whether in the name of the Customer, the Owner and/or the Company or otherwise) any contracts with any third party on any terms (including standard trading terms and terms exempting or limiting liability of such third party), and do all and any other acts on behalf of the Customer and/or the Owner in relation to the performance or fulfillment of the Customer's instructions and/or the obligations under the Services contracted as in the absolute discretion of the Company may be necessary or incidental thereto. The Company may but is not obliged to depart from the Customer's instructions in any respect if in the sole opinion of the Company it is necessary or desirable to do so in the Customer's interests or it is otherwise expedient to do so. Matters authorized aforesaid include without limitation selecting, engaging and contracting with any carriers, forwarders, truckmen, receiving agents, delivery agents, warehousemen, packers and other service providers.

5.2 The Customer expressly authorizes the Company to do such acts and enter into such contracts as referred to in Clause 5.1 on behalf of the Customer so as to bind the Customer by such acts in all respects, notwithstanding any departure from the Customer's instructions as aforesaid. The Customer agrees that the Company is not obliged to consult the Customer before the Company enters into any such contracts or does any such acts. The Customer further agrees that the Company is not obliged to advise the Customer of the terms and conditions of such contracts or details of such acts. The Customer shall have no right to enquire into the actual charges paid by the Company to any third party, and the Customer agrees that any difference between the charges paid by the Customer to the Company and the charges paid by the Company to any third party shall be the Company's commission or remuneration or profit. The Company shall not be under any duty to account to the Customer for such commission or remuneration or profit.

5.3 In entering into any contract or doing any act as referred to in Clauses 5.1 and 5.2, the Company does not itself make or purport to make any contract with the

Customer and/or the Owner for provision of the services by itself but acts solely on behalf of the Customer and/or the Owner in procuring the required services by third party so that the contractual relationship shall be between the Customer or the Owner and the third party. The Company shall have no liability or responsibility whatsoever in respect of any act or omission, negligence or default of the third party or in relation to the Goods. The Customer agrees to be bound by any and all such contracts and acts, and shall indemnify and hold harmless the Company from and against any liabilities which the Company may incur or suffer arising from or in connection with such contracts or acts.

5.4 The Customer expressly authorizes the Company to, if the Company shall require, inspect the Goods or arrange for the Goods to be inspected in the absence of the Customer or the Customer's representative, with or without the Customer's consent or knowledge for the purpose of, among other things, verifying the contents tally with any information provided by the Customer to the Company including but not limited to those stated in the Instructions and ascertaining whether or not the Goods are in contravention of any law, statute or convention.

5.5 The Customer agrees that the Company shall not be obliged to arrange for the Goods to be carried, forwarded, packed, unpacked, stored or handled separately and the Company is authorized to consolidate or arrange to be consolidated the Goods or any part of the Goods with other goods transported.

6. WHERE THE COMPANY CONTRACTS (ON BEHALF OF THE CUSTOMER) IN ITS OWN NAME

6.1 Where the Company enters into a contract on behalf of the Customer in its own name with any other person for the carriage (overseas or local), storage, packing, unpacking, (local) transportation, transshipment, loading, unloading or otherwise handling of the Goods, the Company itself shall not be or be deemed to be a carrier for the purposes of the Carriage by Air Ordinance (Cap 500) nor shall such entering prejudice in any respects the generality of Clause 4.2.

6.2 In addition and without prejudice to the exceptions and limitations contained in these Conditions, the Company shall be entitled to the benefit of all exceptions and limitations in favour of the carriers or other persons storing, packing, unpacking, (local) transportation, transshipment, loading, unloading or otherwise handling the Goods, directly or indirectly, expressly or impliedly contained in the Company's contracts with such carriers or other persons. The Customer shall

not seek to impose on such carriers or other persons any liability greater than that

accepted by such carriers or other persons under such contracts.

7. WHERE THE COMPANY CONTRACTS AS PRINCIPAL

- 7.1 If the Company acts as a principal for the Services or any part of the Services, it shall have full liberty to perform such Services itself, or, to subcontract on any terms whatsoever, the whole or any part of such Services. The Company shall have the rights to depart or deviate from the Customer's instructions if in the sole opinion of the Company such departure or deviation is necessary or desirable in the Customer's interest or is otherwise expedient.
- 7.2 If the Company acts as a principal in relation to the Services or any part of the Services and sub-contract on any terms whatsoever the whole or any part of the Services, in respect of any Services (or any part thereof) sub-contracted, the Company shall have the full benefit of the Rights and Defences available to the sub-contractor(s) (whether in contract or under statute or otherwise in law) as if such Rights and Defences were expressly incorporated herein for the benefit of the Company, and the liability of the Company shall be limited to the amount recoverable by the Company from the sub-contractor(s), and the Customer shall indemnify and hold harmless the Company from and against any liability which the Company may incur or suffer arising from or in connection with such sub-contracts or sub-contracting arrangements unless such liability is caused by the wilful default or wilful misconduct of the Company.
- 7.3 If the Company acts as a principal in the carriage of the Goods, the Company's liability (if any) for loss or damage or delay of the Goods shall be determined as follows:
- (a) If the stage of carriage during which the loss or damage or delay occurred is known, the Company's liability shall be determined by the provisions of any applicable international conventions or non-conventional rules or laws and the Company shall be entitled to all Rights and Defences under or pursuant to such conventions or rules or laws as well as other Rights and Defences under these Conditions which are not repugnant to such conventions or rules or laws;

- (b) In any other case (including where the stage of carriage during which the loss or damage or delay occurred is unknown, or although such stage is known, no international convention or non-conventional rule or law would apply to such loss or damage or delay, the Company's liability shall be determined in accordance with Clauses 23 of these Conditions.
- 7.4 The international conventions which may be applicable include (a) in relation to carriage by sea, Hague Rules and Hague-Visby Rules and (b) in relation to carriage by air, Warsaw Convention, Guadalajara Convention and Montreal Convention. The Customer acknowledges that it has been notified or shall be deemed to have knowledge that the applicable international conventions do generally contain provisions limiting or exempting liability of carriers in certain circumstances.
- 7.5 If the Company is or is deemed to be a carrier in respect of a carriage of the Goods by air, the following notices are hereby given:-
- “If the carriage involves an ultimate destination or stop in a country other than the country of departure, the Warsaw Convention may be applicable and that the Convention governs and in most cases limits the liability of carriers in respect of loss of or damage or delay to cargo.”
- “The first carrier's name may be abbreviated on the face of the air waybill, the full name and its abbreviation being set forth in such carrier's tariffs, conditions of carriage, regulations and timetables. The first carrier's address is the airport of departure shown on the face of the air waybill. The agreed stopping places (which may be altered by carrier in case of necessity) are those places other than the place of departure and the place of destination) set forth on the face of the air waybill or shown in carrier's timetables as scheduled stopping places for the route. Carriage to be performed under the air waybill by several successive carriers is regarded as a single operation.”
- 7.6 Notwithstanding any other provisions of these Conditions, the Company is never a common carrier and may in its sole discretion refuse to offer its services to any person.
8. WHERE THE COMPANY ACTS FOR THIRD PARTY SERVICE PROVIDER
- 8.1 The Customer consents that the Company in its performance of the Services or any part of the Services shall have the right to act as agent or sub-contractor of any third party in any transaction or service or business which relates to or otherwise affects the Customer, the Owner and/or the Goods.

8.2 Where the Company acts as such agent or sub-contractor of a third party, in respect of any act or omission, negligence or default committed by the Company

in the course of acting as such agent or sub-contractor, the Company, as against or relate to the Customer, the Owner and/or other person(s) claiming under the Customer and/or the Owner, shall be entitled to:

- (a) all the Rights and Defences available to such third party (or its agents or sub-contractors), whether in contract or under statute or otherwise available in law as if such third party Rights and Defences were expressly incorporated in these Conditions for the benefit of the Company and made applicable to such act or omission, negligence or default; and
- (b) without prejudice to Clause 8.2(a), all the Rights and Defences of the Company under these Conditions or otherwise available in law.

8.3 Without affecting its generality, Clause 8.2 shall apply where the Company acts as agent or sub-contractor of a third party and in connection with any carriage of the Goods undertaken by such third party to deliver (or arrange to deliver) to the Customer and/or the Owner or collect (or arrange to collect) from the Customer and/or the Owner any Goods prior to their loading or after their discharge.

## 9. PROPER PACKING

Except where the Company is instructed in writing and agrees to pack the Goods the Customer warrants that all the Goods have been properly and sufficiently packed and/or prepared, and that the Company has and accepts no liability for the Goods which are lost or damaged as a result of improper or insufficient packing or preparation, no matter how such loss or damage is caused.

## 10. TRANSPORT UNIT

Where the Goods are carried in or on containers, trailers, flats, tilts, railway wagons, tanks, igloos, or any other unit load device specifically constructed for the carriage of goods by land, sea or air (each hereafter individually referred to as “transport unit”) then, save where the Company has accepted instructions as principal to load the transport unit by itself, the Customer warrants:

- (a) that the Goods have been properly packed into/onto the transport unit;

- (b) that the Goods are suitable for handling or carriage in or on the transport unit;
- (c) that the transport unit is in a good and suitable condition to carry the Goods packed/loaded therein or thereon, and is suitable for the intended carriage and other handling; and
- (d) without prejudice to Clauses 10(a) to (c), that the Goods have been properly, securely and sufficiently packed, and prepared (including proper labeling and marking) in compliance with any statutory regulations or official or recognized standards or requirements, and that such packing and preparation are appropriate to all operations affecting the Goods and in particular to withstand the ordinary risks of handling, storage and carriage; that proper and sufficient examinations or checks of the Goods have been conducted and all steps have been taken in compliance with all applicable statutory regulations or official or recognized standards or requirements relating to security or integrity of the Goods; and that the Customer has complied with all laws and regulations relating to the Goods as regards among others their nature, condition, packing, labeling, marking, description, handling, storage and carriage; and
- (e) that the Customer shall fully indemnify the Company against any loss and damage that the Company suffers as a result of the Customer's failure to comply with the terms of this Clause 10.

11. DELIVERY OF GOODS

The Customer warrants that the consignee or other person entitled to the delivery of the Goods shall take delivery of the Goods upon their arrival at destination and shall pay all necessary charges, taxes and duties and comply with all necessary formalities and procedures.

12. CHANGE OF CONSIGNEE OR NOTIFY PARTY

After the Goods have departed from its place of departure, the Company may but is not obliged to change or procure the change of the consignee and/or the notify party in the air waybill (master or house) or bill of lading (ocean or house) upon the request of the Customer. The Company shall have the sole discretion whether or not to accede to the request and no liability shall be imposed on the part of the Company for its refusal to the

request. In case the Company agrees to change or procure to change as per the request, such change or procurement shall be or be deemed to be provided without any liability whatsoever and howsoever arising on the part of the Company to the Customer and/or the Owner for any matters arising from or in respect of the change or procurement including but not limited to failure for whatsoever reasons that the Goods are ultimately not delivered to the new consignee.

13. DESCRIPTION OF GOODS

The Customer shall be deemed to be bound by and to warrant the truthfulness, completeness and accuracy of all descriptions, values and other particulars furnished to the Company by the Customer and/or the Owner for Customs, Consular and other purposes and the Customer undertakes to indemnify and keep indemnified the Company against all losses, damages, expenses and fines whatsoever arising from any inaccuracy, ambiguity or omission howsoever caused including even if such inaccuracy, ambiguity or omission is not due to any negligence or default on the part of the Customer, the Owner or its agent servant or employee. It is the duty of the Customer to undertake and ensure that all such descriptions, values and particulars are correct, and the Company has no liability whatsoever for any such omission, ambiguity or inaccuracy. The Customer, its agent or the Owner undertake to indemnify and pay the Company for any loss or damage suffered by the Company caused by such omission, ambiguity or inaccuracy.

14. DANGEROUS GOODS

14.1 Except under special arrangements previously made in writing by the Customer and accepted by the Company, the Customer warrants that the Goods are fit for carriage (overseas or local), storage, packing or otherwise handling pursuant or incidental to the Instructions, and are not goods (or consist of goods) included in the Dangerous Goods (Application and Exemption) Regulations of the Laws of Hong Kong Cap.295A or any modification thereof and the IATA Dangerous Goods Regulations prevailing at the time the Company confirms acceptance of the Customer's instructions, nor are goods (or consist of goods) of comparable hazard, nor are goods (or consist of goods) otherwise likely to cause damage. Should the Customer nevertheless deliver any such goods to the Company or cause the Company to accept or

handle or deal with any such goods otherwise than under the special arrangements so previously made in writing, then whether or not the Company is aware of the nature of such goods, the Customer shall be liable for all expenses losses or damages whatsoever caused by or to or in connection with the goods howsoever arising, and shall indemnify the Company against all penalties claims damages costs expenses and any other liabilities whatsoever arising in connection therewith, and the goods may be destroyed or otherwise dealt with in the sole discretion of the Company, its agent or any other person in whose custody or control the goods may be at the relevant time and at the risk and expenses of the Customer and/or the Owner and without any liability whatsoever to the Customer and/or the Owner. The Company, its agent or such other person shall have the sole and absolute right to decide whether or when the goods are or become (or consist of goods which are or may become) unfit for carriage (overseas or local), storage, packing and/or, handling or are or become goods (or consist of goods which are or become goods) of comparable hazard to the goods included in the IATA Dangerous Goods Regulations or the Dangerous Goods (Application and Exemption) Regulations or any modification thereof, or are or become goods (or consist of goods which are or become goods) which are otherwise likely to cause damage. A copy of the prevailing IATA Dangerous Goods Regulations is available for inspection by the Customer upon request.

- 14.2 If such goods are accepted under such special arrangements previously made in writing by the Customer and accepted by the Company, they may nevertheless be destroyed, or otherwise dealt with at the risk and expense of the Customer and/or the Owner and without any liability whatsoever to the Customer and/or the Owner in the sole discretion of the Company, its agent or any other person in whose custody or control they may be at the relevant time on account of risk to other goods, property, life or health, such risk shall be solely determined by the Company, its agent or such other person in their absolute opinion.

14.3 The Customer, the Owner, their agents and servants are all jointly and severally liable for any breach of the items contained in Clauses 14.1 and 14.2. Except under special arrangements previously made in writing by the Customer and accepted by the Company, the Company shall not accept or deal with bullion coins, precious stones, jewellery, valuables, antiques, pictures, livestock or plants. Should any Customer nevertheless deliver any such goods to the Company or cause the Company to handle or deal with any such goods otherwise than under such special arrangements, the Company shall be under no liability whatsoever for or in connection with the 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 and no matter what such value is.

15. DEVIATION

Subject to express instructions in writing given by the Customer and the acceptance of those instructions in writing by the Company, the Company reserves to itself absolute discretion as to the means, routes and procedures to be followed in the carriage, transportation, storage and other handling of the Goods free from any liability whatsoever on the part of the Company. Further, if in the sole opinion of the Company it is at any stage necessary or desirable in the Customer's interests to depart from those instructions, the Company is hereby irrevocably authorized and shall be at liberty to do so, and any departure from the terms and conditions, or in the handling other than pursuant to the normal custom of handling the Goods shall be done at the sole risk of the Customer and/or the Owner.

16. WAREHOUSING

Pending forwarding or delivery, the Goods may be warehoused or otherwise held at the risk of the Customer and/or the Owner at any place or places at the sole discretion of the Company and all the cost of and incidental thereto including without limitation storage and administrative charges shall be for the sole account of the Customer.

17. DECLARATION OF VALUE

17.1 The Company shall not be obliged to make any declaration for the purpose of any statute or convention or contract as to the nature or value of the Goods or any part thereof or as to any special interest in delivery, unless express instructions in writing were previously given to and accepted by the

Company.

17.2 Without prejudice to the generality of Clause 17.1. where there is a choice of rates according to the extent or degree of the liability assumed by carriers, warehousemen or others, the Goods shall nevertheless be forwarded or dealt with at the Customer's or the Owner's risk and at such charges (including the lowest charges) as the Company may at its sole discretion decide, and no declaration of value (where optional) will be made, unless express instructions in writing to the contrary have previously been given by the Customer and accepted by the Company.

17.3 A mere statement or declaration of the value or nature of the Goods for insurance or export or customs or other purposes is not and shall not be construed to be instructions to the Company to make any declaration for the purposes of Clauses 17.1 and 17.2

18. DUTIES

The Customer shall be liable for any duties, taxes, levies, deposits or outlays of any kind levied by the authorities at any port or place for or in connection with the Goods and for any payments, storage, demurrage, fines, expenses, loss or damage whatsoever incurred or sustained by the Company in connection therewith.

19. INSURANCE

19.1 No insurance will be arranged except upon express instructions given in writing by the Customer and accepted by the Company and all insurances arranged or effected by the Company are subject to the usual exceptions and conditions of the policies of the insurance company or underwriters taking the risk. The Company shall not be under any obligation to arrange for 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 the insured shall have recourse against the insurers or underwriters 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 the Customer.

19.2 In so far as the Company agrees to arrange insurance, the Company shall act solely as the agent of the Customer using reasonable effort to assist the Customer in obtaining insurance coverage for and on behalf of the Customer at the Customer's expenses. The Company does not warrant or undertake any such insurance will be accepted by the insurance company or underwriters.

20. NO DUTY TO PRESERVE RIGHTS

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

21. DISPOSAL OF GOODS/LIEN

21.1 Notice of arrival of the Goods will be sent to the notify party or the consignee by ordinary methods. The Company shall not be liable for the non-receipt or delay in the receipt of such notice. Any charges including storages and administrative charges of the Company or those incurred by the Company pending collection will be for the sole account of the Customer.

21.2 Without prejudice to any other rights or remedies which the Company may have (including without limitation those under the other sub-clauses of this Clause 22), if delivery of the Goods or any part thereof is not taken by the consignee or other person entitled to the delivery of the same at the time and place when and where delivery should be taken, the Company shall be entitled (but is not obliged) to store or cause to be stored the Goods or any part thereof at the sole risk of the Customer and/or the Owner, whereupon any liability which the Company may have in respect of the Goods or that part thereof stored as aforesaid shall wholly cease and the cost of such storage and associated charges shall upon demand be paid by the Customer to the Company forthwith.

21.3 Perishable goods which are not taken up immediately upon arrival or which are insufficiently addressed or marked or otherwise not readily identifiable may be sold or otherwise disposed of or dealt with at the sole discretion of the Company without any notice to the Customer and/or the Owner. In case of sale of the Goods, payment or tender to the Customer of the net proceeds of sale thereof after deduction of the indebtedness owed by the Customer to the Company and the charges and expenses incurred for the sale shall be deemed due delivery of the Goods whereupon all obligations of the Company in respect of the Goods and/or the Services contracted for shall be deemed to have been duly and fully performed and discharged.

21.4 The Company shall be entitled (but not obliged) to sell or dispose of (or cause to be sold or disposed) all non-perishable Goods which in the sole opinion of the Company cannot be delivered for the reasons including without limitation that they are insufficiently or incorrectly addressed or they are not collected or accepted by the consignee or any other reason upon

giving 14 days' notice in writing to the Customer. All charges and expenses arising in connection with the storage, sale disposal of or otherwise dealing with the Goods shall be paid by the Customer.

- 21.5 Prior to the release of the Goods or any part thereof, the Company is entitled to retain on a particular and general lien, legal and/or equitable and right of detentions on all Goods (including documents relating to the Goods) for all monies due either in respect of such Goods, or for any particular or general balance or other monies due from the Customer and/or the Owner to the Company including without limitation all freight and associated charges. The said associated charges include but not limited to brokerages, commissions, allowances and other remunerations, storage charges, administrative charges, and legal costs on a solicitor and own client's basis incurred in relation to the recovery of any and all indebtedness owed by the Customer and/or the Owner to the Company. The said associated charges shall accrue and continue to accrue for the account of the Customer on such detained Goods under lien. The Company shall have the right to take all such steps as it thinks fit in its sole discretion to protect the Goods and its interests therein in connection with the protection of monies owed to the Company. If any monies due to the Company are not paid within 14 days after notice of demand has been given to the Customer, the Company shall be entitled to as agent for and at the expenses of the Customer dispose of the Goods in whatever manner in its sole discretion thinks fit including but not limited to sale of the Goods by private contract or auction, returning the Goods to the place of departure or to a place or country where the Goods can be sold or disposed of.
- 21.6 In case of the sale in Clause 21.5, the net proceeds of the sale shall be applied in or towards satisfaction of such indebtedness owed to the Company. The Customer and/or the Owner shall not be relieved from the liability due to the Company merely because the Goods have been sold. The Company shall, upon accounting to the Customer for any balance remaining after payment of all the indebtedness owed to the Company and the costs and expenses of the sale, be discharged from any and all liability whatsoever to the Customer and/or the Owner including in respect of the Goods (including documents relating to the Goods) or otherwise.
- 21.7 In case of the sale and/or application of the net proceeds in satisfaction of the indebtedness in Clauses 21.5 and 21.6, the Customer agrees that the Company shall not be liable in any respects including without limitation any deficiencies or reduction in value received on the sale of the Goods to the Customer, the Owner and/or any third party claiming interest in the Goods both before and after the sale and/or application save for accounting of balance as expressly provided for in Clause 21.6. The Customer shall indemnify and keep indemnified the Company against all claims, liabilities, losses, damages costs and demands whatsoever, howsoever arising and by whomsoever made against the Company in respect thereof.

21.8 Without prejudice to the other sub-clauses of this Clause 21 and any of the Company's other Rights and Defences, upon any such storage, sale and/or disposal under such other sub-clauses, the Goods shall be deemed to have been duly delivered and all the obligations on the part of the Company under the Services contracted for shall be deemed to have been duly and fully performed and discharged.

21.9 The rights of the Company under the other sub-clauses of this Clause 21 are independent of all other clauses of these Conditions and cumulative.

## 22. QUOTATIONS AND CHARGES

22.1 The Customer shall primarily be liable for the payment of all freight, fees, duties, charges and other expenses whether the same (or any of them) are to be pre-paid or to be collected.

22.2 The Customer shall pay the Company all sums due to the Company immediately when due without any deduction or deferment on account of any claim, dispute, counterclaim or set-off (equitable or otherwise). Payment to the Company shall be due immediately as soon as an invoice is rendered to the Customer. Payment shall be made in cash unless otherwise agreed by the Company.

22.3 The Company shall have the right at its sole discretion to request for an advancement to cover fees, duties, charges, taxes and/or other expenses payable before the Company's invoice is rendered to the Customer. Forthwith upon such request being made, the Customer shall make such advancement to the Company.

22.4 Without prejudice to the foregoing provisions, when the Company is instructed to collect freight, duties, fees, charges or other expenses from any person other than the Customer, the Customer shall always remain primarily responsible for the payment of the same or any balance thereof plus any interest if the Company is not paid or fully paid by such other person or persons immediately when due without any deduction or deferment on account of any claim, counterclaim or set off (whether or not demand is made to such other person or persons). Without prejudice to the generality of the foregoing, this provision shall apply in any event notwithstanding any reasons including without limitation where the Goods are refused by the consignee or other person entitled to delivery or confiscated by the customs or other authorities or for any reason in the sole opinion of the Company not practicable or impossible to arrange for the delivery of the Goods.

22.5 On all amounts overdue to the Company, the Company shall be entitled to interest thereon calculated on a monthly basis from the date such accounts are overdue at 2% per month (compounded monthly) during the period that such amounts are overdue and until full repayment.

- 22.6 Quotations are given on the basis of immediate acceptance by the Customer and are subject to withdrawals or revisions by the Company. Further, unless otherwise agreed in writing by the Company, the Company, notwithstanding acceptance of the quotations by the Customer, shall be at liberty to revise quotations or charges and levy additional charges with or without prior notice to the Customer which in the sole opinion of the Company can compensate for changes occurring in currency exchange risks, rates of freight, insurance premiums or any charges applicable to the Goods after the acceptance.
- 22.7 Freight charges are usually quoted and charged on “chargeable weight” basis. Chargeable weight is the actual gross weight or volume weight, whichever is the higher. Volume weight is calculated by reference to the volume of the consignment (including packaging) divided by a certain factor. References to “per kilogramme” or “per ton” or “per pound” refer to the higher of the actual gross weight and the volume weight. Further details relating to the computation of freight charges will be provided to the Customer upon request. The Customer is advised to obtain such details and shall be deemed to have been fully aware of such details even if the Customer does not obtain the same.
- 22.8 Where the Company gives credit to the Customer for payment of any invoiced amount and the Customer is in default of payment after its due date, all outstanding balances of the invoiced amount shall become wholly and immediately due and payable.
- 22.9 Whether the Company may have agreed or refused to change or procure the change of the consignee and/or notify party upon the Customer’s request, if any, after the issue of bill of lading (ocean or house) or air waybill (master or house), arrival of the Goods at destination and the Company’s readiness to deliver the Goods to the original consignee and notify the original notify party shall be or be deemed to be due and full performance of the Services contracted for whereupon the freight and associated charges for the Services contracted for in relation to which the bill of lading or air waybill was issued shall be or be deemed to have been fully earned by the Company and shall become payable forthwith by the Customer without any set-off, deduction or counterclaim.

## 23 LIABILITY AND LIMITATION

- 23.1 Notwithstanding anything to the contrary in these Conditions, the Company shall only be responsible or liable for any damage to or loss or non-delivery or mis-delivery of the Goods or for any delay or deviation in respect of the

transportation or delivery or other handling of the Goods if and only if it is proved that such damage, loss, non-delivery, mis-delivery, delay or deviation occurred whilst the Goods were in the actual custody and under the actual control of the Company and that such damage, loss, non-delivery, mis-delivery, delay or deviation was due to the wilful neglect or wilful default of the Company or its own servants.

- 23.2 Notwithstanding anything to the contrary in these Conditions the Company shall only be liable for any non-compliance or mis-compliance with the Instructions given to it by the Customer if and only if it is proved that such non-compliance or mis-compliance was caused by the wilful neglect or wilful default of the Company or its own servants.
- 23.3 Save as provided in Clauses 23.1 and 23.2, the Company shall be under no liability whatsoever and howsoever arising and whether in respect of or in connection with the Goods, any instructions, business, advice, information or service or otherwise, and whether or not there is negligence or default on the part of the Company, its servants or agents or sub-contractors or other persons for whom the Company is responsible.
- 23.4 Further and without prejudice to the generality of the foregoing provisions in this Clause 23 the Company shall not in any event, whether under this Clause 23 or otherwise, be under any liability whatsoever for:
- (a) any special, incidental, indirect, consequential or economic loss or damage (including without limitation loss of market, profit, revenue, business or goodwill); or
  - (b) any loss or damage or expense arising from or in any way connected with fire or consequence of fire or delay or deviation whatsoever and howsoever caused and whether or not resulting from any act or default or neglect of the Company or its servants or agents or sub-contractors or other persons for whom the Company is responsible.
- 23.5 Notwithstanding anything to the contrary in these Conditions, in no case whatsoever shall the liability of the Company whatsoever and howsoever arising including without limitation any loss of, damage to, non-delivery or mis-delivery of the Goods, delay in shipment or any inappropriate documentations or failure to comply with the Customer's instructions for whatsoever reasons and notwithstanding any lack of explanation exceed the value of the relevant Goods or a sum of HK\$200.00 per shipping package or unit or HK\$10.00 per (weight) kilogram, whichever is the least.
- 23.6 If any of the international conventions including Hague Rules, Hague-Visby Rules, Warsaw Convention, Guadalajara Convention and Montreal Convention or non-conventional rules or laws are compulsorily applicable, the relevant limits of liability set out therein shall apply. In all other cases, the limits of liability detailed in this Clause 23 shall apply.

- 23.7 Notwithstanding anything to the contrary in these Conditions, unless specifically agreed by the Company to the contrary in writing, the Company shall be absolutely discharged of and from any and all liabilities whatsoever and howsoever arising and no action shall lie against the Company unless:
- (a) valid notice in writing of any claim issued by the Customer is received in writing by the Company within 14 days after the date specified in Clause 23.8 below; and
  - (b) suit is brought in the proper forum and written notice thereof is received by the Company within 9 months after the date specified in Clause 23.8 below.
- 23.8
- (a) In case of damage to the Goods, the date of delivery of the Goods to the consignee or other person entitled to the delivery of the Goods or the date of the Company's notification to take delivery of the Goods if delivery is subsequently not taken by the consignee or such other person within 30 days of the notification, whichever is earlier;
  - (b) In the case of loss, non-delivery, mis-delivery or delay in shipment of the Goods, the date that the Goods should have been delivered or 30 days after the date of arrival at destination, whichever is earlier;
  - (c) In any other case, the date of the occurrence of the event giving rise to the claim.
- 23.9 Any notice of claim shall for the purposes of Clause 23.7(a) be or be deemed to be invalid unless accompanied with a statement of the full circumstances giving rise to the claim and full particulars of the claim together with relevant supporting documents. The claimant must allow the Company a reasonable period of time to investigate the claim.
- 23.10 Notwithstanding any provisions to the contrary in these Conditions, the Customer shall save harmless and indemnify and keep the Company indemnified from and against all claims, fines, liabilities, losses, damages, costs and demands whatsoever, howsoever arising and by whomsoever made or preferred in excess of the liability of the Company under the terms of

these Conditions and without prejudice to the generality of the foregoing, this indemnity shall cover all claims costs and demands arising from or in connection with the negligence or breach of duty save for wilful neglect or wilful default of the Company, its servants, sub-contractors or agents.

23.11 The Customer undertakes that no claim shall be made against any officer, servant, agent or sub-contractor of the Company which imposes or attempts to impose upon them any liability in connection with the Services or any part thereof provided or to be provided by the Company. If any such claim should nevertheless be made the Customer shall fully indemnify the Company against all consequences thereof. Without prejudice to the foregoing, every such officer, servant, agent or sub-contractor shall have the benefits of all provisions in these Conditions benefiting the Company as if such provisions were expressly made for his or its benefit.

23.12 Advice and information, in whatever form as may be given by the Company, are provided by the Company for the Customer only and the Customer shall save harmless and indemnify and keep indemnified the Company from and against all claims, liabilities, losses, damages, costs and expenses arising out of reliance on such advice or information by any other person. Except under special arrangements previously made in writing and accepted by the Company, advice or information which is not related to specific instructions is provided gratuitously and without any liability.

23.13 By special arrangement in writing and accepted by the Company, the Company may accept liability in excess of the limit set out in Clause 23.5 provided always that such special arrangement must have included a condition that the Customer agrees to pay the Company's additional charges and the Customer has paid such additional charges for accepting such increased liability. Details of the Company's additional charges will be provided upon request.

#### 24. COLLECT ON DELIVERY (C.O.D.) SHIPMENTS

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

25. GENERAL AVERAGE

The Customer shall defend, indemnify, keep indemnified and hold harmless the Company in respect of an General Average or any claims of a General Average nature which may be made on or against the Company whether there is negligence or default on the part of the Company and the Customer shall promptly provide such security in a form acceptable to the Company as may be required by the Company in its sole discretion in this connection.

26. WAIVER

Any waiver by the Company of any default of the Customer or right of the Company under these Conditions shall not be deemed to be a waiver by the Company of a prior, subsequent or continuing default or right of a like or similar nature.

27. SEVERABILITY

If any provision of these Conditions is declared void invalid or unenforceable by any court, tribunal or arbitral, the remaining provisions of these Conditions shall to the extent permitted by the relevant laws remain in full force and effect as though the void invalid or unenforceable provisions were never provisions of these Conditions.

28. APPLICATION TO ACTIONS

These Conditions shall apply to all claims in whatsoever nature against the Company including without limitation claims on contract or in tort.

29. GOVERNING LAW

These Conditions and any acts or contracts to which they apply shall be governed by and construed according to the laws of the Hong Kong Special Administrative Region. Any dispute arising out of these Conditions or any such acts or contracts shall be subject to the non-exclusive jurisdiction of the courts of the Hong Kong Special Administrative Region.

30. STANDARD TRADING CONDITIONS OF THE HONGKONG ASSOCIATION OF FREIGHT FORWARDING AND LOGISTICS LIMITED (“HAFFA Conditions”)

There shall incorporated into these Conditions each and every terms and conditions of HAFFA Conditions in its latest edition insofar as they are applicable. In case of any inconsistency or contradiction between them and any of these Conditions, the terms and conditions of these Conditions shall prevail.