



**STANDARD**

**TRADING**

**CONDITIONS**

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# **Myanmar International Freight Forwarders' Association**

**( MIFFA )**

## **STANDARD TRADING CONDITIONS**

### **PART I GENERAL PROVISIONS**

#### **1. APPLICABILITY**

- (a) These trading conditions apply when they are incorporated, however this is made, in writing, orally or otherwise, into a contract by referring to the MIFFA STANDARD TRADING CONDITIONS.
- (b) Whenever such reference is made, the parties agree that these Conditions shall supersede any additional terms of the contract, which are in conflict with these Conditions, except in so far as they increase the responsibility or obligations of the Company.
- (c) If any legislation is compulsorily applicable to any business undertaken, these Conditions shall, as regards such business, be read as subject to such legislation and if any part of these Conditions be repugnant to such legislation to any extent such part shall, as regards such business, be overridden to that extent and no further, 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.

- (d) With reference to clause 1.3 above, where a document bearing a title of FIATA Multimodal Transport Bill of Lading (FBL), or House Air Waybill (HAWB) issued subject to the current Standard Conditions governing FIATA Multimodal Transport Bills of Lading, or House Air Waybill and under ICC Uniform Rules for a Multimodal Transport Document, and being printed as such on the face of the document, or where a bill of lading (whether or not negotiable), or waybill is issued by or on behalf of the Company and provided that the Company contract as carrier, the terms and conditions embodied in such foregoing mentioned documents shall be paramount in so far as those terms and conditions are inconsistent with these Conditions.

## 2. DEFINITIONS

- (a) **Company** is the Myanmar International Freight Forwarders' Association member trading under these conditions.
- (b) **Freight Forwarder** means the person concluding a contract of Freight Forwarding Services with a Customer.
- (c) **Freight Forwarding Services (herein after call Services)** means services of any kind relating to the carriage, consolidation, storage, handling, packing or distribution of Goods as well as ancillary and advisory services in connection therewith, including but not limited to customs and fiscal matters, declaring the Goods for official purposes, procuring insurance of Goods and collecting or procuring payment or documents relating to the Goods.
- (d) **Customer** means any person at whose request or on whose behalf the Company provides any Services.
- (e) **Person** includes persons or any body or bodies, association or bodies corporate.
- (f) **Owner** includes the owner, shipper, and consignee of the Goods and any other person who is or may become interested in the Goods and anyone acting on their behalf.

- (g) **Goods** mean any property including live animals as well as containers, pallets or similar articles of transport or packaging not supplied by the Company.
- (h) **Container** includes any container, trailer, pallet, transportable tank, flat, or any articles of transport used to carry or consolidate Goods or any equipment connected thereto.
- (i) **Dangerous Goods** means Goods which are officially classified as hazardous as well as Goods which are or may become of a dangerous, inflammable, radioactive, noxious or damaging nature.
- (j) **Perishable Goods** mean fresh, chilled or frozen fish, crustacean, molluscs, fruits, vegetables, chilled or frozen meat or poultry, dairy and dairy products, eggs and egg products, and swine and pork products.
- (k) **Special Drawing Right (SDR)** means the unit of account as defined by the International Monetary Fund (IMF).
- (l) **Valuables** mean bullion, coins, money, negotiable instruments, precious stones, jewellery, antiques, pictures, works of art and similar properties.
- (m) **Mandatory Law** means any statutory law or international convention forming part of the national law relating to the carriage of goods, the provisions of which cannot be departed from by contractual stipulations detrimental to the Customer.
- (n) **In writing** includes telegram, telex, telefax, electronic mail or any recording by electronic means.
- (o) **Instructions** mean a statement of the Customer's specific requirements.
- (p) **Conditions** means the entire undertakings, terms, conditions and clauses embodied herein.

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|-----|--|---|
| (q) | <b>Warsaw Conventions</b>                  | means the Convention for the unification of certain rules relating to International Carriage by Air Act 1929.                               |
| (r) | <b>Multimodal Transport Operator (MTO)</b> | shall have the same meaning as set out in the Mandatory Law.  |
|     | <b>Multimodal Transport Operator (MTO)</b> | means any person who concludes a multimodal transport contract and assumes responsibility for the performance thereof as a carrier. (FIATA) |

### **3. INSURANCE**

No insurance will be affected by the Company, except upon express instructions given in writing by the Customer. All insurances affected are subject to the usual exceptions and conditions of the policies of the insurance companies or underwriters taking the risk. Unless otherwise agreed in writing the Company shall not be under any obligation to affect a separate insurance on each consignment, but may declare it on any open or general policy held by the Company.

### **4. HINDRANCES**

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

## **5. METHOD AND ROUTE OF TRANSPORTATION**

The Company shall carry out the services according to the Customer's instructions as agreed. If the instructions are inaccurate or incomplete or not according to contract, the Company may at the risk and expense of the Customer act as Company deems fit.

Unless otherwise agreed, the Company may without notice to the Customer arrange to carry the Goods on or under deck and choose or substitute the means, route and procedure to be followed in the handling, stowage and transportation of the Goods.

## **Part II The Company's General Responsibilities, Rights and Liability**

### **6. THE COMPANY'S GENERAL RESPONSIBILITIES**

- (a) (1) The Company shall perform its duties with diligence, skill, judgment and care as reasonably required from its profession.
- (2) With reference to clause 8.1 hereof, the Company shall carry out its services within a reasonable time.
- (3) With reference to these Conditions and in particular to subject clause 7.1 (D) and 7.1 (E) below, the Company shall take all reasonable steps to perform any of the Customer's Instructions accepted by the Company.
- (4) If at any stage during its services the Company should reasonably consider that there is good reason in the Customer's interests to depart from any of the Customer's Instructions, the Company shall be permitted to do so and shall not incur any additional liability in consequence of so doing.
- (5) When using its discretion as permitted in these Conditions, the Company shall do so with due regard to the interests of the Customer.



- (b) If after a contract has been agreed, events or circumstances come to the attention of the Company, which in the opinion of the Company make it wholly or in part impossible for the Company to fulfill its duties, it shall take reasonable steps to inform the Customer of such events or circumstances and seek further instructions.

## **7. GOODS AND SERVICES**

- (a) Unless otherwise previously agreed in writing, the Company accepts no responsibility for departure or arrival dates of the Goods.
- (b) Unless otherwise previously agreed in writing, 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 misdelivery of Goods.
- (c) Except in accordance with Instructions previously received in writing and accepted in writing by the Company, the Company shall not be obliged to make any declaration for the purpose of any statute, convention or contract as to the nature or value of any Goods or as to any special interest in delivery.

## **8. RIGHTS OF THE COMPANY**

- (a) Except as otherwise agreed in writing between the Company and its Customer, the Company shall be entitled to enter into contracts on behalf of the Customer and the Customer hereby expressly agrees thereto
  - (1) for the carriage of Goods by any route, means or person;
  - (2) for the storage, packing, transshipment, loading, unloading or handling of Goods by any person at any place whether on shore or afloat and for any length of time;
  - (3) for the carriage or storage of Goods in or on Containers as the case may be or with other goods of whatever nature;
  - (4) for the performance of such acts as in the opinion of the Company may be necessary or incidental to the performance of the Company's obligations for the interests of the Customer.

- (b) The Company may at any time comply with the orders or recommendations given by any authority and the responsibility of the Company in respect of the Goods shall cease on the delivery or disposition of the Goods in accordance with such orders or recommendations.
- (c) If delivery of the Goods or any part thereof is not taken by the Customer or Owner at the time and place when and where the Company is entitled to call upon the Customer or Owner to take delivery thereof, the Company shall be entitled to store the Goods or any part thereof at the sole risk and expenses of the Customer.
- (d)
  - (1) Notwithstanding clause 9.3 above, the Company shall be entitled at the expense of the Customer to dispose of (by sale or otherwise as may be reasonable in all the circumstances) Goods, which are unable to deliver in accordance with Instructions:
    - (i) on giving 21 (twenty one) days' notice in writing to the Customer or where the Customer cannot be traced and reasonable efforts have been made to contact any parties who may reasonably be supposed by the Company to have any interest in the Goods; or
    - (ii) without notice Goods which have perished (perishable goods), deteriorated or altered, or are in immediate prospect of doing so in a manner which has caused or may be reasonably expected to cause loss or damage to third parties or to contravene any applicable laws or regulations.
  - (2) The net proceeds derived from such disposition and after deduction by the Company for any debts owing to it shall be returned to the Customer.
- (e) 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.

## **9. THE COMPANY'S LIABILITY (EXCEPT AS PRINCIPAL)**

- (a) **Basis of liability**
  - (1) **The Company's duty of care**

The Company is liable if it fails to exercise due diligence and take reasonable measures in the performance of the Freight Forwarding Services, in which case Company, subject to Article 11, shall

compensate the Customer for loss of or damage to the Goods as well as for direct financial loss resulting from breach of Company's duty of care.

**(2) No liability for third parties**

The Company is not liable for acts and omissions by third parties, such as, but not limited to, Carriers, warehousemen, stevedores, port authorities and other freight forwarders, unless he has failed to exercise due diligence in selecting, instructing or supervising such third parties.

## **10. THE COMPANY'S LIABILITY AS PRINCIPAL**

**(a) The Company's liability as Carrier**

The Company is subject to liability as principal not only when it actually performs the carriage himself by his own means of transport (performing Carrier), but also if, by issuing his own transport document or otherwise, he has made an express or implied undertaking to assume Carrier liability (contracting Carrier).

However, the Company shall not be deemed liable as Carrier if the Customer has received a transport document issued by a person other than the Company and does not within a reasonable time maintain that the Company is nevertheless liable as Carrier.

**(b) The Company's liability as principal for other services**

With respect to services other than carriage of Goods such as, but not limited to, storage, handling, packing or distribution of the Goods, as well as ancillary services in connection therewith, the Company shall be liable as principal:

- (1) when such services have been performed by Company using its own facilities or employees or
- (2) if Company has made an express or implied undertaking to assume liability as principal.

**(c) The basis of the Company's liability as principal**

The Company as principal shall, subject to Article 11, be responsible for the acts and omissions of third parties he has engaged for the performance of the contract of carriage or other services in the same manner as if such acts and omissions were Company's own and Company's rights and duties shall be subject to the provisions of the law applicable to the mode of transport or service concerned, as well as the additional conditions expressly agreed or, failing express agreement, by the usual conditions for such mode of transport or services.

## 11. EXCLUSIONS, ASSESSMENT, AND MONETARY LIMITS OF LIABILITY

### (a) Exclusions

Except in so far as otherwise provided by these Conditions, the Company shall not be liable for any loss or damage or delay in delivery with respect to goods carried if Company proves that the events which caused such loss, damage or delay occurred during that carriage in one or more of the following circumstances:

- (1) the act or omission of the Customer or Owner or any person acting on their behalf;
- (2) Compliance with the Instructions given to the Company by the Customer, Owner or any person entitled to give them;
- (3) insufficiency of the packing or labeling of the Goods except where such service has been provided by the Company;
- (4) Handling, loading, storage or unloading of the Goods by the Customer or Owner or any person acting on their behalf;
- (5) inherent or latent defect in the Goods;
- (6) force majeure;
- (7) strikes or lockouts or stoppage or restraint of labour from whatever cause, whether partial or general;
- (8) with respect to goods carried by sea or inland waterways or air or land transport when such loss, damage, or delay during such carriage has been caused by:
  - (i) act, neglect, or default of the master, mariner, pilot, driver, operator or the servant of the carrier in the navigation or in the management of ship, or
  - (ii) fire unless caused by the actual fault or privity of the carrier. However, always provided that whenever loss or damage has resulted from unseaworthiness of the ship, the Company can prove that due diligence has been exercised to make the ship seaworthy at the commencement of the voyage. However, in the event of loss or damage of cargo due to the question of seaworthiness, airworthiness, and roadworthiness or alike, the

international conventions or national law limits the liability of carriers.

- (9) any cause or event which the Company could not avoid and the consequences whereof it could not prevent by the exercise of reasonable diligence.
- (10) Valuables or dangerous Goods unless declared as such to the Company at the time of conclusion of the contract;
- (11) loss following from delay unless expressly agreed in writing;
- (12) indirect or consequential loss such as, but not limited to, loss of profit and loss of market.

(b) **Assessment of compensation**

- (1) Compensation shall be calculated by reference to the invoice value of the Goods plus freight and insurance if paid.
- (2) If there be no invoice value for the Goods, the compensation shall be calculated by reference to the value of such Goods at the place and time when they are delivered to the Customer or Owner or should have been so delivered. The value of the Goods shall be determined according to the current commodity exchange price or, if there is no commodity exchange price or current market price, by reference to the normal value of goods of the same kind and quality.
- (3) By special agreement in writing and on payment of additional charges, higher compensation may be claimed from the Company not exceeding the value of Goods or the agreed value, whichever is the lesser.

(c) **Monetary limits**

(1) **Loss of or damage to the Goods**

The provisions of Article 10.3, notwithstanding, the Company shall not be or become liable for any loss of or damage to the Goods in an amount exceeding the equivalent of SDR 2 (two) per kilogram of gross weight of the Goods lost or damaged unless a larger amount is recovered from a person for whom the Company is responsible. If the Goods have not been delivered within 90 (ninety) consecutive days after the date when the Goods ought to have been delivered, the

claimant may, in the absence of evidence to the contrary, treat the Goods as lost.

(2) **Limitation of liability for delay**

If the Company is liable in respect of loss following from delay, such liability shall be limited to an amount not exceeding the remuneration relating to the service giving rise to delay.

(3) **Other type of loss**

The provisions of Article 11.3 notwithstanding, the Company's liability for any type of loss not mentioned in 12.3.1 and 12.3.2 shall not exceed the total amount of SDR 75,000- (seventy five thousand) for each incident unless a larger amount is received from a person for whom the Company is responsible.

## 12. NOTICE

- (a) Unless notice of loss of or damage to the Goods, specifying the general nature of such loss or damage, is given in writing to the Company by the person entitled to receive the Goods when they are handed over to him, such handing over is *prima facie* evidence of the delivery of the Goods in good order and condition. Where such loss or damage is not apparent, the same *prima facie* effect shall apply if notice in writing is not given within 6 consecutive days after the day when the Goods were handed over to the person entitled to receive them.
- (b) With respect to all other loss or damage, any claim by the Customer against the Company arising in respect of any service provided for the Customer or which the Company has undertaken to provide shall be made in writing and notified to the Company within 14 (fourteen) days of the date upon which the Customer became or should have become aware of any event or occurrence alleged to give rise to such claim. Any claim not made and notified as aforesaid shall be deemed to be waived and absolutely barred except where the Customer can show that it was impossible for him to comply with this time limit and that he has made the claim as soon as it was reasonably possible for him to do so.

### **13. TIME BAR**

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

With respect to other loss than loss of or damage to the Goods the one year period should be counted from the time when the loss or injury occurs or when the goods ought to be delivered respectively.

### **14. LIABILITY OF SERVANTS AND OTHER PERSONS**

These Conditions apply whenever any claim is made against a servant, agent or other person the Company engaged for the performance of the service (including any independent contractor) whether such claims are founded in contract or in tort, and the aggregate liability of the Company and such servants, agents or other persons shall not exceed the limit applicable to the service concerned as expressly agreed between the Company and the Customer of following from these Conditions.

## **Part III The Customer's Obligation and Liability**

### **15. THE CUSTOMER'S OBLIGATION**

The Customer guarantees to the Company that:

- (A) he is either the Owner or the authorised agent of the Owner of the Goods and that he is authorised to accept and is accepting these Conditions not only for himself but also as agent for and on behalf of the Owner of the Goods;
- (B) he has reasonable knowledge of matters affecting the conduct of his business, including but not limited to the terms of sale and purchase of the Goods and all other matters relating thereto;
- (C) he shall give to the Company sufficient and executable instructions;
- (D) the description and particulars of the Goods are complete, accurate and correct;
- (E) Except where the Company has agreed in writing to pack the Goods, he shall guarantee that the Goods are properly and sufficiently prepared, packed, stowed, labeled and/or marked, and that the preparation, packing, stowage,

labelling and marking are appropriate to any operations or transactions affecting the Goods and the characteristics of the Goods;

- (F) he shall be deemed to have guaranteed to the Company the accuracy, at the time the goods were taken in charge by the Company, of all particulars relating to the general nature of the Goods, their marks, number, weight, volume and quantity and, if applicable, to the dangerous character of the goods as furnished by him or on his behalf for insertion in the transport document;
- (G) he shall warn the Company as to the nature of the Goods delivered which are liable to taint or affect other goods;
- (H) he shall mark or label dangerous Goods in accordance with international conventions or any national legislation which may also apply;
- (I) he shall remain liable even if the transport document has been transferred by him.

## **16. UNFORESEEN CIRCUMSTANCES**

In the event that the Company, in case of unforeseen circumstances, acts in the best interest of the Customer extra costs and charges have to be borne by the Customer.

## **17. SPECIAL INSTRUCTIONS REGARDING CERTAIN GOODS**

- (a) (1) Unless otherwise previously agreed in writing, the Customer shall not deliver to the Company or cause the Company to deal with or handle Dangerous Goods.
- (2) If the Company agrees to accept Dangerous Goods and then in the opinion of the Company, its agents or servants, they constitute a risk to other goods, property, life or health, they may without notice be destroyed or otherwise dealt with at the expense of the Customer or Owner.
- (3) If the Customer is in breach of sub-clause 19.1 (A) above, he shall be liable for all loss or damage whatsoever caused by or to or in connection with the Goods howsoever arising and shall defend, indemnify and hold harmless the Company against all penalties, claims, damages, costs and expenses whatsoever arising in connection therewith and the Dangerous Goods may without notice be destroyed or otherwise dealt with at the sole discretion of the Company or any other person in whose custody they may be at the relevant time.



- (b) (1) Except under special arrangement previously made in writing, the Customer shall not deliver to the Company or cause the Company to deal with species, currency notes, bank notes, bills, bonds, shares, debentures, warrants, valuables, human remains, livestock or plants.
- (2) If the Customer is breach of sub-clause 19.2 (A) above, the Company shall be under no liability whatsoever for or in connection with such goods howsoever arising;
- (3) The Company may at any time waive its rights and exemptions from liability under sub-clause 19.2 (A) above in respect of any one or more of the categories of goods mentioned herein or of any part of any category. If such waiver is not in writing, the onus of proving such waiver shall be on the Customer.
- (c) (1) The Customer undertakes not to tender for transportation any Goods which require temperature control without previously giving written notice of their nature and particular temperature range to be maintained, and in the case of a temperature controlled Container stuffed by or on behalf of the Customer further undertakes that the Container has been properly pre-cooled or pre-heated as appropriate, that the Goods have been properly stuffed in the Container and that its thermostatic controls have been properly set by the Customer.  
The Customer undertakes not to tender for transportation any Goods which require temperature control without previously giving written notice of their nature and particular temperature range to be maintained as appropriate.
- (2) If the Customer is in breach of sub-clause 19.3 (A) above, the Company shall be under no liability for any loss, or damage arising from such non-compliance.

## 18. PAYMENT

### (a) NO SET-OFF

The Customer shall pay to the Company all monies due, in cash or as agreed all sums immediately without any reduction or deferment on account of any claim, counter-claim or set-off. The Customer shall pay to the Company all monies due without any reduction or deferment on account of any claim, counter-claim or set-off. (FIATA)

- (b) When the Company is instructed to collect freight, duties, charges, or other expenses from any person other than the Customer, the Customer shall be responsible for the same on receipt of evidence of demand and non-payment by such other person when due.

- (c) On all amounts overdue to the Company, the Company shall be entitled to interest calculated at 2 (two) per cent per month during the period that such amounts are overdue.

## **19. GENERAL LIEN**

- (a) The Company shall, to the extent permitted by the applicable law, have a general lien on the Goods and any documents relating thereto for any amount due at any time to the Company from the Customer including storage fees and the cost of recovering same, and may enforce such lien in any reasonable manner which Company may think fit.
- (b) The Company shall have a lien on all Goods and related documents in its possession, custody or control for all sums due at anytime from the Customer or Owner, and shall be entitled to sell or dispose of such Goods or documents as agent for and at the expense of the Customer and apply the proceeds in or towards the payment of such sums upon giving 28 (twenty eight) days' notice in writing to the Customer, and where the Goods are liable to perish or deteriorate the Company's right to sell or dispose of the Goods shall arise immediately upon any sum becoming due to the Company subject only to the Company taking reasonable steps to bring to the Customer's attention of selling or disposing of the Goods before doing so .

## **20. DUTY OF INDEMNIFICATION**

### **(a) General duty of indemnification**

- (1) The Customer and Owner shall defend, indemnify and hold harmless the Company against all liability, loss or damage, costs and expenses arising:
  - (i) from the nature of the Goods unless caused by the Company's negligence;
  - (ii) Out of the Company acting in accordance with the Customer's or Owner's Instruction; or
  - (iii) Arising from a breach of guarantee or obligation by the Customer or arising from the negligence of the Customer or Owner.

- (2) Except to the extent caused by the Company's negligence, the Customer and Owner shall be liable for and shall defend, indemnify and hold harmless the Company in respect of all duties, taxes, imposts, levied by any authority and for all payments, fines, costs, expenses, loss and damage whatsoever incurred or sustained by the Company in connection therewith.
- (3) Advice and/or 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 and/or information.
- (4)
  - (i) The Customer undertakes that no claim be made against any director, servant, sub-contractor or agent of the Company which imposes or attempts to impose upon any of them any liability whatsoever in connection with the Goods, if any such claim should nevertheless be made, to indemnify the Company against all consequences thereof.
  - (ii) The Customer shall defend, indemnify and hold harmless the Company from and against all claims, costs and demands whatsoever and by whomsoever made or preferred in excess of the liability of the Company under the terms of these Conditions and without prejudice to the generality of this clause. This indemnity shall cover all claims, costs and demands arising from or in connection with the negligence of the Company, its directors, servants, subcontractors or agents unless it has been caused by fraud or gross negligence of the directors, servants, subcontractors or agents of the Company.
  - (ii) In this clause, sub-contractors include direct and indirect sub-contractors and their respective servants and agents.

**(b) Duty of indemnification in respect of General Average**

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

## **21. THE CUSTOMER'S LIABILITY**

The Customer shall be liable to the Company for all loss or damage, costs, expenses and official charges resulting from the Customer's inaccurate or incomplete information or instructions or the handling over by the Customer or any person acting on his behalf to the Company, or to any other person to whom the Company may become liable, of Goods having caused death or personal injury, damage to property, environmental damage or any other type of loss.

## **Part IV Settlement of Dispute and Jurisdiction**

### **22. ARBITRATION**

Any disputes arising with regards to these conditions and the also regarding to the rights and obligations of the parties shall be settled through amicable consultation. In case no settlement can be reached within 30 days after commencement of such consultation, such disputes shall be settled by Arbitration through the two Arbitrators whom shall be appointed by both parties. Should the Arbitrators fail to reach an agreement, then the dispute shall be referred to any Court under the National Law applicable to the Company.

### **23. JURISDICTION**

Unless otherwise agreed, actions against the Company may be instituted only in the place where the Company has its principal place of business.

### **24. APPLICABLE LAW**

These conditions shall be governed by the law of the country of the Company has its principal place of business.

## **25. MANDATORY LAW**

These Conditions shall only take effect to the extent that they are not contrary to the mandatory provisions of international conventions or national law applicable to the Company.

## **Part V Applicability to Actions in Tort**

### **26. Applicability to Actions in Tort**

The conditions apply to all claim against the company or by the Company where the claim be founded in contract or in tort.

## **Part VI Miscellaneous**

### **27. MISCELLANEOUS**

- (a) Any notice served by post in relation to or in connection with the Agreement or the Services hereunder shall be conclusively deemed to have been received on the second day following the day on which it was posted to the address of the recipient last known to the Company. Any notice sent by facsimile or e-mail transmission by the Customer or the Owner to the Company shall be conclusively deemed to have been received at the time of actual receipt by The Company. This clause shall be without prejudice to any other agreement or arrangement between the Company and the Customer or Owner relating to communications by means of Electronic Data Interchange (EDI).
- (b) The waiver by the Company of a breach or default of any of the provisions set out in these Conditions shall not be construed as a waiver of any succeeding breach of the same or other provisions herein nor shall any delay or omission on the part of the Company to exercise or avail itself of any right power or privilege that it has or may have hereunder operate as a waiver of any breach or default by the Customer.
- (c) 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.

- (d) (1) The defences and limits of liability provided for by these Conditions shall apply in any actions against the Company whether such action be founded in contract or tort or in whatsoever form.
- (2) Notwithstanding any provisions to the contrary contained herein, Services in relation to goods of a fragile nature, such as glass, china, statutory precious metals or pictures, or goods of a perishable nature, or special goods such as live animals, are only rendered by the Company solely at the Customer's risk without any liability whatsoever to the Company.
- (3) The rates published herewith are for the conveyance to all parts of the world of goods
- (4) consisting of ordinary merchandise; the Customer is responsible for the payment of any increase in rates, freights, premiums or other charges which may be imposed after the commencement of the transit. Works of art and other goods of high value, goods out of proportion in bulk to their weight such as bicycles, perambulators, feathers, bamboo-furniture or hollow glass, may be accepted at rates which are available from the company on request. Customs duties, local taxes and charges, portorage and local delivery expenses are additional to the rates for carriage unless otherwise stated. All rates and charges when payable abroad are liable to be slightly increased.
- (5) Unless a special agreement is made as to the rate of carriage, the Company shall have the option of charging by value, weight or measurement.

## **28. Air Carriage**

If the Company acts as a principal in respect of a carriage of Goods by air, the following notice is hereby given:-

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