

# CLASQUIN SHANGHAI LTD

## Standard Trading Conditions

### TERMS & CONDITIONS

#### PART I: DEFINITIONS AND GENERAL CONDITIONS

##### **ARTICLE 1. PURPOSE**

- A. The purpose of these standard trading conditions (the "**Conditions**") is to define the procedures for the implementation of the activities and services associated with the transportation of Goods (as defined below) and/or managing the flow of Goods in accordance with the laws and regulations in force governing national and international transport. The Company (as defined below) may subcontract the performance of these operations.
- B. Any commitment, shipment or operation constitutes acceptance by the Customer (as defined below) of the Conditions, unless otherwise agreed between the Parties (as defined below).

##### **ARTICLE 2. DEFINITIONS**

In these Conditions, the following terms written with a capital letter, either in the singular or plural form, shall have the meaning ascribed to them as follows:

"**Agent of the Company**" shall mean any servant, sub-contractor or agent of the Company for the provision of the Services and/or the performance of the Company's obligations hereunder.

"**Authority**" shall mean a duly constituted legal or administrative person, acting within its legal powers and exercising jurisdiction within any nation, state, municipality, port or airport.

"**Company**" shall mean "Clasquin Shanghai Ltd", a company validly existing under the laws of the People's Republic of China, having its registered address at Room 06, Unit East, G/F., No. 58 Wuhua Road, Hongkou District, Shanghai 200086, the People's Republic of China.

"**Container**" shall include any container, flexitank, trailer, transportable tank, flat, pallet or any article of transport used to carry or consolidate Goods and any equipment of or in connection thereto.

"**Customer**" shall mean any person at whose request or on whose behalf the Company provides a Service (as defined below).

"**Dangerous Goods**" shall include goods which are or may become of a dangerous, inflammable, radio-active or likely damaging nature or environment, liable to taint or affect other goods or goods likely to harbor or encourage vermin or other pests or otherwise under local laws rules and regulations as identified as dangerous.

"**Goods**" shall include the cargos, goods and containers provided by the Owner and/or the Customer in respect of which the Company provides a Service.

"**Hague-Visby Rules**" shall mean the provisions of the International Convention for the Unification of certain rules relating to Bills of Lading signed in Brussels on 25 August 1924 as amended by the

Visby Protocol dated 23 February 1968 and the SDR Protocol dated 21 December 1979.

**"Incidental matters"** shall mean anything done or to be done in relation to the Goods or the provision of any Services ancillary to the Goods including but not limited to moving, storing, processing, packing or leaving the Goods at any warehouse, terminal, yard, wharf or other place or area, loading or unloading the Goods from any vehicle, vessel or other conveyance, stowing or packing the Goods or fumigating, transshipping, inspecting or otherwise handling the Goods or anything done in relation thereto.

**"Instructions"** shall mean a statement of the Customer's specific requirements provided to the Company by the Customer, the Owner or any person authorized by the Customer in connection with the Services and the Goods.

**"Services"** shall mean the whole of the services provided by the Company to the Customer, including but not limited to international freight forwarding, domestic freight forwarding, transport, storage, loading and unloading, processing, distribution and handling of common goods and operation of logistics business by making use of computer network, and all matters necessarily related to the provision of the Services or ancillary to the provision of the Services.

**"Montreal Convention"** shall mean the Convention for the Unification of Certain Rules for International Carriage by Air signed in Montreal in 1999.

**"Owner"** shall include the owner, shipper, consignor, depositor and consignee of the Goods and any other person who is or may become interested in the Goods and anyone acting on their behalf.

**"Party(ies)"** shall mean the Company and/or the affiliated companies to the Company and/or the Owner.

**"Person"** shall include individual persons or anybody or corporate bodies.

### **ARTICLE 3. APPLICATION**

3.1 Subject to Article 3.1 (ii) below, all Services provided by the Company, whether gratuitous or not, are subject to these Conditions.

- (i) The provisions of Part I of these Conditions shall apply to all Services;
- (ii) The provisions of Part II of these Conditions shall only apply to the extent that the Company provides Services as Agent (as defined in Article 19.1.1);
- (iii) The provisions of Part III of these Conditions shall only apply to the extent that the Company provides Services as Principal (as defined in Article 19.1.1).

3.2 Where a document bearing a title of or including a "bill of lading" (whether or not negotiable), or "waybill" is issued by or on behalf of the Company and where such document provides that the Company contracts as an "agent of the carrier", the provisions set out in such document shall be paramount in so far as such provisions are inconsistent with these Conditions.

3.3 Every variation, cancellation or waiver to these Conditions must be made in writing and signed by a Director of the Company, duly authorized. Notice is hereby given that no other person than a Director of the Company has or will be given any authority whatsoever to agree to any variation, cancellation or waiver to these Conditions.

#### **ARTICLE 4. PROVISION OF SERVICES**

##### 4.1 Provision of Services by the Company acting as an "Agent"

All Services are provided by the Company acting as an agent. More particularly, the Company acts as an agent where:

- (i) the Company procures a bill of lading or other document evidencing a contract of carriage between a Person, other than the Company, and the Customer or the Owner; or
- (ii) the Company provides services in respect of or relating to customs requirements, taxes, licenses, consular documents, certificates of origin, inspection, certificates and other similar services.

##### 4.2 Provision of Services by the Company acting as a "Principal"

All Services are provided by the Company acting as an agent except in the following circumstances where the Company acts as principal:

- (i) where the Company performs any carriage, handling or storage of Goods but only to the extent that the carriage is performed by the Company itself or its servants and the Goods are in the actual custody and control of the Company; or
- (ii) to the extent that the Company expressly agrees in writing to act as a principal, or
- (iii) to the extent that the Company is held by a court of law to have acted as a principal.

##### 4.3 Without prejudice to the generality of Articles 4.1 and 4.2, the fact that the Company is either acting as an agent or as a principal shall only be determined in accordance with the provisions of these Conditions and shall not be determined or be evidenced by:

- (i) the charging by the Company of a fixed price for a Service or Services of whatsoever nature;
- (ii) the supplying by the Company of its own or leased equipment in respect of any carriage, handling or storage of Goods.

##### 4.4 The Company is not a common service provider and will accept no liability as such and it reserves the right to accept or refuse any Service request at its discretion.

All Services are performed subject only to these Conditions and, when applicable but subject to Article 19 and 21, the conditions on any bill of lading, sea or air waybill, consignment note (including carriage by internal air, road, railway, waters, etc.) and warehouse receipt issued by the Company whereby the Company expressly agrees in writing to act as principal.

#### **ARTICLE 5. OBLIGATIONS OF THE CUSTOMER**

##### 5.1 The Customer warrants and undertakes that he/she is either the Owner or the authorized agent of the Owner of the Goods and that he/she is authorized to accept and is accepting these Conditions not only for himself/herself but also for and on behalf of the Owner of the Goods.

##### 5.2 The Customer warrants and undertakes that he/she has reasonable knowledge of matters

- affecting (i) the conduct of his/her business, including but not limited to the terms of sale and purchase of the Goods and all other matters relating thereto and (ii) the provisions of the Services.
- 5.3 The Customer, the Owner and/or any other Person who has been granted the power by the Customer and/or the Owner shall give sufficient, accurate and executable Instructions to the Company in relation to the provision of the Services by the Company.
- 5.4 The Customer warrants and undertakes that the description and particulars of the Goods are complete and correct.
- 5.5 The Customer warrants and undertakes that the Goods are properly packed and labeled according to the rules and regulations applicable in the country of its initial location as well as in the country of its destination, except where the Company has accepted Instructions in respect of such services.
- 5.6 The Customer warrants and undertakes that he/she has complied or shall comply with all the applicable laws and regulations, including but not limited to those on the restrictions and/or controls on the importation and/or exportation of goods, of the country of the initial location of the Goods, the country of the destination of the Goods and/or the transit countries.

**ARTICLE 6. SPECIAL INSTRUCTIONS BY CUSTOMER, GOODS AND SERVICES**

- 6.1 Unless otherwise previously agreed in writing by the Parties, the Customer shall not deliver to the Company or cause the Company to deal with or handle Dangerous Goods.
- 6.2 If the Customer is in breach of Article 6.1 above and delivers to the Company or causes the Company to handle Dangerous Goods without the Company's prior written consent, the Customer shall be liable for all losses or damage whatsoever caused by or to or in connection with the Dangerous 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.
- 6.3 If the Company agrees to provide Services in respect of Dangerous Goods, such Services for Dangerous Goods shall be provided by the Company subject to the possibility of the Company or any Person acting as an agent of the Company to, without any prior notice or liability, destroy or otherwise deal with the Dangerous Goods at the expense of the Customer or the Owner if the Company or its agent considers that the said Dangerous Goods might constitute a risk to other goods, property, life or health.
- 6.4 The Customer, the Owner and/or any Person who has been granted power by the Customer and/or the Owner shall give sufficient timely, accurate and executable Instructions to the Company regarding the Services to be provided by the Company and shall provide assistance and co-operation as may be necessary in respect of the performance of the Services by the Company.
- 6.5 The Customer warrants at all times that the description, particulars and the Instructions relating to the Services and the Goods are complete, sufficient and accurate.
- 6.6 The Customer undertakes not to tender for transportation of any Goods which require temperature control without giving prior written notice of their nature and particular temperature range to be maintained to the Company. In case of a temperature controlled container stuffed by the Customer or by any Person on behalf of the Customer, the Customer further undertakes that the said container has been properly pre-cooled or preheated as

appropriate, that the Goods have been properly stuffed in the container and that its thermostatic controls have been properly set by the Customer.

- 6.7 For the avoidance of doubt, if the requirements stated in Article 6.6 here above are not fulfilled due to the absence of prior written notice by the Customer to the Company in this respect, the Company shall not be liable for any losses of or damage to the Goods caused by such non-compliance.

#### **ARTICLE 7. INSURANCE**

- 7.1 No insurance will be subscribed for the Goods subject to the Services except upon express Instructions given to and expressly accepted by the Company and all insurances subscribed by the Company are subject to the usual exceptions and conditions of the policies of the insurance company or underwriters taking the risk.
- 7.2 Unless otherwise agreed in writing, the Company shall not be under any obligation to subscribe to any separate insurance for each consignment but may declare it on any open or general policy.
- 7.3 The Company only acts as an agent of the Customer in respect of the subscription of the insurance relating to the Containers and/or Goods provided by the Customer and subject to the Services. Should the insurers dispute their liability for any reason, the Customer 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 insurance 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.

#### **ARTICLE 8. GENERAL INDEMNITIES AND LIABILITIES**

- 8.1 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 of the value of any Goods or as to any special interest in delivery.
- 8.2 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 the price of the Services.
- 8.3 Unless otherwise previously agreed in writing by the Company that the Goods shall depart at or arrive by a particular date, the Company accepts no responsibility in respect of the departure or arrival dates of the Goods.
- 8.4 The Customer and/or Owner shall defend, indemnify and hold harmless the Company against all liability, losses, damage, costs and expenses arising out of:
- (i) the alteration to the nature of the Goods unless caused by the Company's negligence,
  - (ii) the Company's acting in accordance with the Instructions, or
  - (iii) a breach of warranty, undertaking, and/or obligation by the Customer or the

negligence of the Customer and/or the Owner.

- 8.5 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, levies, deposits and outlays of whatsoever nature levied by any Authority and for all payments, fines, costs, expenses, losses and damage whatsoever incurred or sustained by the Company in connection therewith.
- 8.6 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 liabilities, losses, damage, costs and expenses arising out of any other Person relying on such advice or information.
- 8.7 The Customer undertakes that no claim be made against any 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.
- 8.8 Without prejudice to the foregoing, every such Agent of the Company shall have the benefit of all provisions herein, as if such provisions were expressly provided for their benefit. It is expressly agreed by the Customer that, to the extent of those provisions, these Conditions are entered into by the Company not only on its behalf, but also as agent and trustee for such servants, sub-contractors and agents.
- 8.9 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 Article, this indemnity shall cover all claims, costs and demands arising from or in connection with the negligence of the Company and/or its Agents.
- 8.10 In this Article, "Agent" shall include direct and indirect sub-contractors of the Company and their respective servants and agents.
- 8.11 The Customer shall be liable for the losses, damage, contamination, soiling, detention or demurrage before, during and after the carriage of property (including, but not limited to, Containers) of the Company, the Company's servants, sub-contractors and agents, independent contractors engaged by the Company for performance of part or all of the Services or any Person or owner of any vessel, vehicle and goods caused by the Customer or Owner or any Person acting on behalf of either of them or for which the Customer is otherwise responsible.

#### **ARTICLE 9. CHARGES, TARIFFS AND BILLING**

- 9.1 Quotations as to fees, rates of duty, freight charges, insurance premiums or other charges given by the Company to the Customer are for informational purposes only and are subject to change without notice; no quotation shall be binding upon the Company unless the Company agrees in writing to undertake the handling or transportation of the shipment at a specific rate or amount set forth in the quotation and payment arrangements are agreed between the Company and the Customer.
- 9.2 The Company shall invoice the Customer the services charges for Services provided to the Customer (the "**Services Charges Invoices**") and the Customer shall inform the Company of

any dispute or discrepancy found in the Services Charges Invoices within seven (7) calendar days from the receipt of the said Invoices (the "**Claim Period**"). If the Customer fails to make a claim as to the Services Charges Invoices within the Claim Period, the Customer shall be deemed as having agreed with the said Invoices in all respects. It is expressly agreed that no claim may be made in respect of any Services Charges Invoices after the Claim Period.

- 9.3 Notwithstanding the provisions of Article 9.2 here above, the Customer shall immediately pay to the Company all sums when due without deduction or deferment on account of any claims, counterclaim or set-off. The Company is entitled to impose interest on the overdue sum of money without prejudice to other rights or remedies it may have.
- 9.4 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.
- 9.5 The Customer shall pay all amounts due to the Company on due date. However, in case of overdue payments by the Customer, the latter shall pay to the Company interests on the overdue amounts at a rate of four per cent (4%) during the period that such amounts are overdue.

## **ARTICLE 10. LIBERTIES AND RIGHTS OF COMPANY**

### **10.1 SUBCONTRACTING**

Where the Company employs third parties to perform all or part of the Services to be provided to the Customer, the Customer agrees that the Company shall have no direct responsibility or liability to the Customer for any act or omission of such third party, even though the Company may be responsible for the payment of such third party's charges. However, the Company shall, if suitably indemnified by the Customer against all costs (including attorney and client costs) which may be incurred by or awarded against the Company, take such action against the third party on the Customer's behalf as the Customer may direct.

### **10.2 TERMS AND CONDITIONS OF AGENTS AND SUBCONTRACTORS**

- 10.2.1 The Customer agrees that all Goods shall be dealt with by the Company on the terms and conditions, whenever such terms and conditions are consistent with these Conditions, stipulated by the carriers, warehousemen, government departments, and all other parties (whether acting as agents or subcontractors of the Company or not) into whose possession or custody the Goods may pass, or subject to whose authority they may at any time be.
- 10.2.2 The Company shall be entitled, except insofar as has been otherwise agreed in writing, to enter, on behalf of itself or the Customer and without notice to the Customer, into contracts relating to the following:
- (i) all or part of the logistics services by any Person, means or time limit;
  - (ii) the location and lease of the warehouse, the packing or handling of the Goods or;
  - (iii) the carriage of the Goods by any route, means or Person;
  - (iv) the carriage of the Goods of any description whether containerized or not, on or under the deck of any vessel;

- (v) 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;
  - (vi) the carriage or storage of the Goods in Containers or with other goods of whatever nature;
  - (vii) the performance of its own obligations as to the Services to be provided to the Customer; or
  - (viii) the implementation of such acts that the Company may consider necessary or incidental to the performance of the Services and Company's obligations.
- 10.2.3 The Company shall be entitled but under no obligation to depart from the Instructions in any respect if the Company considers that it is in the Customer's interest. The Company shall bear any additional liability in relation thereto.
- 10.2.4 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.
- 10.2.5 If at any stage of the performance of the Company's obligations, in the opinion of the Company or any Agent of the Company, the Services are or are likely to be affected in whole or in part by any hindrance, risk, delay, difficulty or disadvantage whatsoever and which cannot be avoided by reasonable endeavors of the Company or such other Person, the Company may, after giving a written notice to the Customer or the Owner or without notice where it is not reasonably possible to give such notice, treat the performance of its obligations and the provision of the Services as terminated and place the Goods or any part of them at the Customer's or the Owner's disposal at any place which the Company may deem safe and convenient, whereupon the responsibility of the Company in respect of the Goods shall cease. After the termination of the Services in accordance with this Article, the Customer shall be responsible for any additional costs of carriage, delivery and/or storage of the Goods at such place and all other expenses which may be incurred by the Company.
- 10.2.6 If delivery of the Goods or any part thereof is not taken by the Customer or the Owner at the time and place when and where the Company or the Agent of the Company makes the delivery, the Company or such other person is entitled to call upon the Customer or the Owner to take delivery thereof, the Company or the Agent of the Company shall be entitled to store the Goods in the open or under covered storage location at the sole risk and expense of the Customer and/or the Owner.
- 10.2.7 Notwithstanding the provisions of Articles 10.2.5 and 10.2.6, the Company shall be entitled to but under no obligation, and without no additional liability to the Customer or the Owner, sell or dispose of the Goods at the expense of the Customer as follows:
- (i) on giving twenty one (21) calendar days notice in writing to the Customer, all Goods which in the opinion of the Company cannot be delivered as instructed; and
  - (ii) without notice to the Customer, Goods which have perished, deteriorated or altered, or are in immediate prospect of doing so in a manner which has caused or may be reasonably expected to cause losses or damage to any Person or property or to contravene applicable regulations.



The Customer shall, on demand, pay to the Company any and all expenses incurred in respect of the sale or the disposal of the Goods as abovementioned.

10.2.8 The Company shall have a particular and general lien on all Goods or documents relating to the Goods in its possession for all sums due at any time by the Customer or the Owner. The Company shall be entitled to sell or dispose of such Goods or documents at the expense of the Customer and without any liability to the Customer and/or the Owner and apply the proceeds in or towards the payment of such sums after giving a fifteen (15) calendar days notice in writing to the Customer or the Owner.

10.2.9 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.

10.2.10 The Company shall have the right to enforce against the Customer and/or the Owner, jointly and severally, any liability of the Customer under these Conditions or to recover from them any sums to be paid by the Customer, which upon demand have not been paid.

## **ARTICLE 11. CONTAINERS**

11.1 If a Container has not been packed nor stuffed by the Company, the Company shall not be liable for any losses of or damage to the contents if caused by:

- (i) the manner in which the Container has been packed or stuffed;
- (ii) the unsuitability of the contents for carriage in Containers, unless the Company has approved the suitability;
- (iii) the unsuitability or defective condition of the Container provided by the Customer or its supplier;
- (iv) the unsuitability or defective condition of the Container provided by or on behalf of the Company if the unsuitability or defective condition arose (a) without any negligence on the part of the Company or (b) would have been apparent upon reasonable inspection by the Customer or the Owner or any Person acting on behalf of either of them;
- (v) if the Container is not sealed at the commencement of the Carriage except where the Company has agreed to seal the Container.

11.2 The Customer shall defend, indemnify and hold harmless the Company against all liability, losses, damage, costs and expenses arising from one or more of the matters covered by Article 11.1 except for Article 11.1(iv) above.

11.3 Where the Company is instructed to provide a Container, in the absence of a written request to the contrary, the Company is not under an obligation to provide a Container of any particular type or quality.

## **ARTICLE 12. GENERAL LIABILITY**

12.1 Except insofar as otherwise provided by these Conditions, the Company shall not be liable for any losses or damage whatsoever arising from:

- (i) the act or omission of the Customer or the Owner or any person acting on their

behalf;

- (ii) the compliance with the Instructions;
  - (iii) the insufficiency of the packing or labeling of the Goods except where such packing or labeling has been done by the Company upon request by the Customer;
  - (iv) the handling, loading, storage or unloading of the Goods by the Customer or the Owner or any Person acting on their behalf,
  - (v) the inherent vices of the Goods;
  - (vi) riots, civil commotions, strikes, lockouts, stoppage or restraint of labour from whatsoever cause;
  - (vii) fire, flood, epidemics or storm; or
  - (viii) any cause which the Company could not avoid and the consequences whereof it could not prevent by the exercise of reasonable diligence.
- 12.2 Subject to Article 8.3, the Company shall not be liable in contract or in tort or otherwise for losses, damage or cost howsoever caused (whether indirect or consequential) to property other than the Goods themselves and shall not be liable for any pure economic losses, indirect or consequential losses or damage, loss of profit or market due to the delay in the delivery of or deviation of the shipment of the Goods howsoever arising.
- 12.3 Where the loss of or damage to the Goods occurred in a specific section of the multi-mode transportation, the liability of the Company for damages and the limit thereof should be governed by the relevant laws on the specific mode of transportation used in the specific section. Where the specific section of transportation in which the loss or damage occurred cannot be identified, the limit of liability shall be the least one of those thereof provided in all relevant laws applicable to the mode of transportation involved.

### **ARTICLE 13. AMOUNT OF COMPENSATION**

- 13.1 Except in so far as otherwise provided by these Conditions, the liability of the Company, howsoever arising, shall not exceed the following:
- (a) in respect of all claims other than those subject to the provisions of Article 13.4, the amount of the Services fees related to the Goods lost, damaged, misdirected, misdelivered or in respect of which a claim arises,
  - (b) in respect of claims for delay where not excluded by the provisions of these Conditions, the amount of the Company's charges in respect of the Goods delayed.
- 13.2 The limitation of liability referred to in Article 13.1 shall apply notwithstanding the fact that the cause of the loss or damage caused to the Goods is unexplained.
- 13.3 The Company may accept liability in excess of the limits set out in these Conditions if:
- (i) the Company has agreed so in writing prior to the receipt of the Goods from the Customer; and
  - (ii) the Customer has paid or agreed to pay to the Company additional charges for accepting such increased liability. Details of the Company's additional charges will be

provided upon request.

- 13.4 Compensation to be paid by the Company to the Customer in accordance with Article 13.3 shall be calculated by reference to the invoice value of the Goods as declared by the Customer upon delivery of the Goods to the Company, plus freight and insurance fees paid by the Customer, if any.
- 13.5 In case of application of Article 13.4, if no invoice value for the Goods has been declared by the Customer, the compensation shall be calculated by reference to the amount of Service fees/of value of such Goods at the place and time when they were delivered to the Customer or the Owner or should have been so delivered. The value of the Goods shall be determined according to the current market price of the Goods, or, if there be no commodity exchange price or current market price, by reference to the normal value of goods of the same kind and quality.
- 13.6 Unless agreed in writing prior to receipt, the Company will not accept or deal with bullion, coin, precious stone, jewellery, antiques, works of art or other valuable goods (altogether, the "**Valuable Goods**"). Should the Customer nevertheless deliver any such Valuable Goods to the Company or cause the Company to handle or deal with any such Goods other than in accordance with prior written agreement of the Company, the Company shall be under no liability whatsoever for or in connection with such Valuable Goods howsoever arising.

#### **ARTICLE 14. NOTICE OF LOSS - TIME BAR**

- 14.1 The Company shall be discharged of all liability unless:
- (i) notice of any claim is received in writing by the Company or the Agent of the Company within fourteen (14) calendar days after the date specified in Article 14.2 below, or within any shorter delay as stated in national or international regulations applicable, and
  - (ii) legal proceedings are initiated in the proper forum as specified under Article 18 and written notice thereof received by the Company within nine (9) months after the date specified in Article 14.2 below.
- 14.2 For the purpose of Article 14.1, the applicable dates are:
- (i) in the case of damage to the Goods, the date of delivery of the Goods;
  - (ii) in the case of delay, loss or non-delivery of the Goods, the date on which the Goods should have been delivered;
  - (iii) in any other case, the event giving rise to the claim.

#### **ARTICLE 15. GENERAL AVERAGE**

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

#### **ARTICLE 16. MISCELLANEOUS**

- 16.1 Any notice served by post shall be deemed to have been given on the third (3<sup>rd</sup>) calendar day following the day on which it was posted to the address of the recipient of such notice last known to the Company.
- 16.2 The defenses and limits of liability provided for by these Conditions shall apply in any action against the Company whether such action be founded in contract or tort.
- 16.3 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 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 be repugnant to such legislation to any extent such part shall, as regards such business, be over-ridden to that extent and no further.
- 16.4 Headings of articles or groups of articles in these Conditions are for indicative purposes only.
- 16.5 These Conditions are drafted in both Chinese and English language. In case of any conflict, discrepancy, or difference, the English version shall prevail.

#### **ARTICLE 17. FORCE MAJEURE**

- 17.1 In the event of Force Majeure, both the Company and the Customer shall be excused from the performance or for any delay in the performance of the Services and obligations contained herein.
- 17.2 Each Party agrees to give the other Party immediate notice of any Event of Force Majeure, stating its course and probable duration, followed by a written notice as soon as practical. Such Party shall notify the other Party immediately upon termination of such Event of Force Majeure.
- 17.3 "Event of Force Majeure" as defined herein shall mean fire, flood, explosion, typhoon, sandstorm, windstorm, calamities, epidemics, strikes, lockout, labor shortage or dispute, war, other acts of God, acts or request of government, accident, change of regulations or rules or law or government policy which renders a Party incapable of performing any of its obligations hereunder or resulting in an inability to obtain material, power, equipment or transportation from the occurrence of such circumstances, the failure of the other Party, or any other unforeseen cause beyond the control of such Party.

#### **ARTICLE 18. LAW AND JURISDICTION**

- 18.1 These Conditions and any claim or dispute arising out of or in connection with the Services of the Company shall be subject to laws and regulations of the People's Republic of China. However, should the applicable laws and regulations of the People's Republic of China not provide for any provision related to specific issues, the Hague Visby Rules or any relevant international convention shall apply.
- 18.2 The Parties shall strive to settle any dispute, controversy, or claim arising out of or relating to these Conditions, or the violation, early termination, or invalidity thereof (jointly a "**Dispute**"), through friendly consultations. If no settlement can be reached through consultations within one (1) month of the submission of the Dispute by one Party to the other, either party may submit the Dispute to the International Court of Arbitration of the International Chamber of Commerce and shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce (the "**Rules**") by one or more arbitrators appointed in accordance with

the said Rules.

18.3 The place of arbitration shall be Hong Kong and the languages of arbitration shall be English.

18.4 The award of such arbitration body shall be final and shall be binding upon the Parties hereto.

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

### **ARTICLE 19. SPECIAL LIABILITY AND INDEMNITY CONDITIONS**

19.1 To the extent that the Company acts as a Freight Forwarder, 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.

19.2 The Company shall not be liable for the acts and omissions of such third parties referred to in Article 19.1 above.

19.3 The Company when acting as a Freight Forwarder has the authority of the Customer and full power to enter into contracts on the Customer's behalf and to do such acts so as to bind the Customer by such contracts and acts in all respects notwithstanding any departure from the Instructions.

19.4 Except to the extent caused by the Company's negligence, the Customer shall defend, indemnify and hold harmless the Company in respect of all liability, losses, damage, costs or expenses arising out of any contracts made in the procurement of the Customer's requirements in accordance with Article 19.1.

### **ARTICLE 20. CHOICE OF RATES**

Where there is a choice of rates according to the extent or degree of liability assumed by Persons carrying, storing and/or handling the Goods, no declaration of value will be made by the Company on behalf of the Customer unless otherwise agreed in writing.

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

### **ARTICLE 21. SPECIAL LIABILITY CONDITIONS**

21.1 To the extent that the Company contracts as principal for the performance of the Instructions, the Company undertakes to perform itself or procure the carrier to perform the Instructions. Subject to the provisions of these Conditions, the Company shall be liable for the loss of or damage to the Goods occurring from the time that the Goods are taken into its charge until the time of delivery.

21.2 Where the Company contracts as a principal and sub-contracts the performance of the

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 the sub-contractor and in any law, statute or regulation and the liability of the Company towards the Customer shall not exceed the amount recovered, if any, by the Company from such sub-contractor.

- 21.3 Notwithstanding any other provisions in these Conditions to the contrary, if the loss of or damage to the Goods occurs when the Company is acting as principal, the Company's liability shall be determined by the provisions contained in any international convention or national law, the provisions of which:
- (i) cannot be departed from by private contract, to the detriment of the claimant; and
  - (ii) 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.
- 21.4 Notwithstanding any other provisions in these Condition to the contrary, if it can be proved that the loss of or damage to the Goods occurred at sea or inland waterway and the provisions of Article 21.3 shall not apply, the Company's liability shall be determined by the Hague-Visby Rules. Reference in the Hague-Visby Rules regarding the carriage by sea shall be deemed to include reference to carriage by inland waterways and the Hague-Visby Rules shall be construed accordingly.
- 21.5 Notwithstanding the provisions of Articles 21.2, 21.3 and 21.4, if the loss of or damage to the Goods occurred at sea or on inland waterways, and the Owner, Charterer or operator of the carrying vessel is entitled to limit its liability at law and establishes a limited fund, the liability of the Company shall be limited to the proportion of such limitation fund as is allocated to the Goods.
- 21.6 In the event of any inconsistency between these Conditions and the conditions of any Bill of Lading, Sea or Air Waybill, consignment note (including carriage by internal air, road, railway, waters), and warehouse receipt issued by or on behalf of the Company acting as principal, the conditions of any such documents shall prevail to the extent of such inconsistency but no further.
- 21.7 Notwithstanding any other provision of these Conditions to the contrary, where the Company acts as a principal in respect of the carriage of Goods by air, the Company's liability in respect of loss of or damage to such Goods shall be determined in accordance with the Montreal Convention.

# 嘉世坚国际货运代理（上海）有限公司

## 标准交易条件

### 条款与条件

#### 第一部分：定义和一般条件

##### 第1条 目的

- A. 该标准交易条件（“**条件**”）的目的在于确定开展与货物（定义见下文）运输有关的经营活  
动和服务，及/或根据管理国内和国际运输的现行法律法规管理货物流动的程序。公司（定义见下  
文）可将上述经营活动进行分包。
- B. 除非双方（定义见下文）另行同意，任何承诺、货运或运营构成客户（定义见下文）对条件的  
接受。

##### 第2条 定义

在本条件中，以下首字母大写的术语，不论是单数还是复数形式，其意义应如下文所赋予：

“**公司代理人**”是指提供本条件项下的服务及/或履行本条件项下的公司义务的任何雇员、分包  
商或代理人。

“**有关部门**”是指在任何国家、州、市、港口或机场履行管辖权，在其合法权力范围内行动的合法成  
立的法人或行政机关。

“**公司**”是指“嘉世坚国际货运代理（上海）有限公司”，一家根据中华人民共和国法律有效存续的  
公司，其注册地址为中华人民共和国上海市虹口区物华路58号底层东间06室，邮编：200086。

“**容器**”包括任何集装箱、装箱液袋、拖车、移动式水箱、舱内甲板、货板或任何用以运载或固定货  
物以及任何货物的设备或与之有关的设备的运输用品。

“**客户**”是指公司应其要求或为其利益提供服务（定义见下文）的任何人。

“**危险物品**”包括有或可能有危险、易燃、辐射或可能损害自然或环境的物品，该等物品会污染或影  
响其他物品，或者是可能携带或易滋生寄生虫或其它害虫的物品，或者当地法律、法规和规定定义为有  
危险的其它物品。

“**货物**”包括由所有权人和/或客户提供的，公司就其提供服务的船货、物品和集装箱。

“**海牙维斯比规则**”是指经1968年2月23日订立的《维斯比规则》以及1979年12月21日订立的《特别  
提款权议定书》修订的《统一提单的若干法律规定的国际公约》（1924年8月25日于布鲁塞尔签订）的  
规定。

“**杂项**”是指有关货物或和货物相关的服务提供有关的已完成或即将完成的事项，包括但不限于搬

运、储存、处理、包装或将货物放在任何仓库、终点站、庭院、码头或其他场地或场所、将货物在任何车辆、船舶或其它运输工具上装货或卸货、理舱或货物包装或消毒、转运、检查或者以其他方式处理货物，或者与之相关的任何其它已完成的事项。

“指示”是指由客户、所有权人或任何由客户授权的人给予公司的与服务 and 货物有关的关于客户特定要求的陈述。

“服务”是指公司提供给客户的全部服务，包括但不限于一般物品的国际货物代理、国内货运代理、运输、仓储、装卸货、处理、分销和管理，以及运用计算机网络进行的物流运营，以及与服务提供或与之相关的所有必需的事项。

“蒙特利尔公约”是指1999年于蒙特利尔签订的《统一国际航空运输某些规则的公约》。

“所有权人”包括货物的所有权人、托运人、发货人、寄托人及收件人，以及与货物利益相关或可能相关的任何其他人及其代理人。

“各方”是指公司及/或公司的关联公司及/或所有权人。

“人士”是指自然人或任何人或公司实体。

### **第3条 申请**

3.1 根据以下第3.1(ii)条，公司所提供的服务，不论有偿或是无偿，都应符合以下条件。

- (i) 本条件第一部分的规定应适用于所有服务；
- (ii) 本条件第二部分的规定应仅适用于公司作为代理人（定义见第19.1条）提供服务的情形；
- (iii) 本条件第三部分的规定应仅适用于公司作为委托人（定义见第21.1条）提供服务的情形。

3.2 若公司开具或以公司名义开具有标题为“提单”（不论是否可流通）或“运货单”或包含“提单”（不论是否可流通）或“运货单”字样的单据，且该单据规定公司以“承运人的代理人”名义签订合同，若该等单据中的规定与本条件不一致，则应以该等单据中的规定为准。

3.3 对本条件的每次变更、撤销或弃权应以书面形式做出，并由公司的一名经正式授权的董事签署。在此需要明确，公司董事之外的任何其他人无权，也不会任何情况下被授权对条件的任何变更、撤销或弃权表示同意。

### **第4条 服务提供**

4.1 公司作为“代理人”提供服务

所有服务由公司作为代理人进行提供。具体来说，公司在以下情形下作为代理人：

- (i) 公司获得提单或其他证明一位公司以外的人士与客户或所有权人之间的货运合同的单据；或
- (ii) 公司就海关要求、税收、许可、领事文件、原产地证明、检验、证明及其它类似的服



务项目提供服务或与之有关的服务。

#### 4.2 公司作为“委托人”提供服务

所有服务由公司作为代理人进行提供；但是在以下例外情形中，由公司作为委托人：

- (i) 当公司进行货运、货物管理或仓储时，但仅限于由公司或其雇员执行货运，且货物在公司的实际监管和控制之下；或
- (ii) 限于公司书面明示同意作为委托人的情形；或
- (iii) 限于法院要求公司作为委托人的情形。

#### 4.3 在不影响第4.1条和第4.2条的一般性的前提下，公司作为代理人还是作为委托人应当仅根据本条件的规定来决定，且不得由以下因素决定或证明：

- (i) 公司对一项服务或不论任何性质的服务收取固定金额的费用；
- (ii) 公司就任何货运、货物管理或仓储提供其自有的或租赁的设备。

#### 4.4 公司不是一个一般服务提供商，也不接受作为一般服务提供商应负的责任，公司保留自主决定接受或拒绝任何服务请求的权利。

所有服务的提供应当仅遵循本条件，以及在遵循第19条和第21条的前提下，适用的任何公司开具的提单、海运或空运运货单、托运单（包括经国内航空、陆路、铁路、水路等进行的货运）和仓单上的条件，公司通过后者书面明示同意作为委托人。

### **第5条 客户的义务**

- 5.1 客户保证并承诺，他/她为货物的所有权人或所有权人的授权代理人，并且他/她为自身以及为货物的所有权人以其名义接受和经授权接受本条件。
- 5.2 客户保证并承诺，他/她对于影响：(i)他/她的商业行为，包括但不限于货物买卖条款和所有其它相关事项，以及(ii)服务的规定的事项有合理程度的了解。
- 5.3 客户、所有权人和/或任何其他由客户和/或所有权人授权的人士应当就公司提供服务向公司给出充分、准确和可执行的指示。
- 5.4 客户保证并承诺，对于货物的描述和细节是完整和正确的。
- 5.5 客户保证并承诺，货物已按照其初始地所在国和目的地所在国适用的规定被妥善包装和贴标，除非公司接受了有关该等服务的指示。
- 5.6 客户保证并承诺，他/她已经或必须遵守货物初始地所在国、目的地所在国及/或所有过境国的全部适用法律法规，包括但不限于在货物进出口限制及/或管制方面的法律法规。

### **第6条 客户特别指示、货物和服务**

- 6.1 除非双方事先另行书面约定，客户不得将危险物品交付给公司，或致使公司处理或管理危险物

品。

- 6.2 若客户违反以上第6.1条，在未得到公司事前书面同意的情形下将危险物品交付给公司或致使公司管理危险物品，客户应当为危险物品所导致的、遭受的或与之有关的所有损失或损害承担责任，不论该损失或损害是如何产生的，也应当保护公司不遭受与之相关而产生的所有处罚、索赔、损害、成本和支出并进行赔偿，并且危险物品可由公司或届时监管危险物品的任何其他人士不经通知而自行选择进行销毁或以其它方式处理。
- 6.3 若公司同意就危险物品提供服务，则为危险物品提供该等服务应服从于以下可能性的存在，即：若公司或其代理人认为该等危险物品可能对其它货物、财产、生命或健康构成风险，则公司或作为公司的代理人的任何人士，无需任何事先通知也无需承担任何责任，可销毁或以其它方式处理危险物品，费用由客户或所有权人承担。
- 6.4 客户、所有权人和/或任何被客户和/或所有权人授权的人士应当就公司将提供的服务给予公司充分及时、准确和可执行的指示，且应就公司提供服务提供可能需要的协助和配合。
- 6.5 客户始终保证，有关服务和货物的描述、细节和指示是完整、充分和准确的。
- 6.6 客户承诺不会在未事先将货物性质和特别温度维持范围书面通知公司的情况下要求运输任何需要温度控制的货物。若有客户或代表客户的任何人士填装的温度控制集装箱，客户进一步承诺该集装箱已视情况妥善预冷或预热，且集装箱里的货物已妥善填装，其温度调节装置已由客户妥善设置完毕。
- 6.7 为避免歧义，若以上第6.6条中规定的要求因客户未能就此提前书面通知公司而未能履行，该等不合规定所导致的任何货物损失或损害，公司不应承担责任。

## **第7条 保险**

- 7.1 服务项下的货物将不会投保任何保险，除非公司收到明确指示并明示同意，且所有由公司投保的保险都应当遵循保险公司或承担风险的保险商的保单中的一般例外和条件。
- 7.2 除非另行书面同意，公司不承担为各单托运分别投保单独的保险的义务，但可在任何公开或一般保单上对此进行声明。
- 7.3 就客户提供的在服务项下的容器和/或货物所进行的投保，公司仅作为客户的代理人进行工作。若承保人因任何原因对其责任产生争议，客户应当仅向承保人追索，而公司不应对此承担任何与此相关的责任，尽管保单所规定的保险费用可能与公司所收取的或客户支付给公司的费用不一致。

## **第8条 一般赔偿和责任**

- 8.1 除非根据公司事前收到的且由公司书面接受的书面明示指示，公司不承担为任何法规、约定或合同的目的，就货物的性质或价值或交付中的任何特别利益进行任何说明的义务。
- 8.2 除非事前另行书面同意，或者公司签署的单据中有其它规定，有关付款交货或放行、或出示特定单据交货或放行的指示应以书面方式做出，且公司的责任不得超出服务的价格所包含的范围。
- 8.3 除非公司事先另行书面同意货物应于特定日期发出或到达，公司不接受与货物发出或到达日期

- 有关的责任。
- 8.4 客户和/或所有权人应保护公司不遭受在以下情形下产生的所有责任、损失、损害、成本和支出并进行赔偿：
- (i) 货物性质的变化，因公司过失导致的除外，
  - (ii) 公司的行动符合指示，或者
  - (iii) 客户违反任何保证、承诺及/或义务，或者客户和/或所有权人的过失。
- 8.5 除非因公司过失而导致，客户和所有权人应当就任何有关部门征收的任何性质的关税、税收、课税、税费、保证金和费用，以及不论因何原因而产生的或公司遭受的与之相关的所有支付、罚款、成本、支出、损失和损害承担责任，并保护公司不遭受上述负担，且进行赔偿。
- 8.6 不论以何形式提供的建议和信息由公司仅向客户提供的，且客户应保护公司不遭受任何依赖于该等建议或信息的其他人士所产生的所有的责任、损失、损害、成本和支出，并进行赔偿。
- 8.7 客户承诺，任何公司代理人都不会被提起有关加诸于或试图加诸于其上的与货物相关的任何责任的索赔；若即便如此仍有该等索赔产生，客户应就其所有后果对公司进行赔偿。
- 8.8 在不影响以上规定的前提下，每一个该等公司代理人应当是本条件中所有规定的受益人，即如同该等规定是明确为其利益而设。客户明确同意，就该等规定，公司不仅以其自身名义，也以其雇员、分包商和代理人的代理人 and 信托人的名义签订了本条件。
- 8.9 客户应当保护公司不遭受超出公司在本条件的条款项下的责任的所有索赔、成本和要求，不论其由谁提出，并且进行赔偿。在不影响本条的一般性的情况下，该等赔偿应包括公司和/或其代理人的过失引起的或与之有关的所有索赔、成本和要求。
- 8.10 在本条款中，“代理人”应包括公司直接和间接的分包商及其各自的雇员和代理人。
- 8.11 客户应为公司、公司的雇员、分包商和代理人、由公司聘请提供全部或部分服务的独立承包商、或者任何船舶、车辆和物品的任何人士或所有权人的财产（包括但不限于容器），因客户、所有权人或以两者中任何一方的名义行动的、或客户为其负责的任何人士所导致的，在运输之前、之中及之后的损失、损害、污染、腐蚀、扣留或滞留承担责任。

## **第9条 费用、关税和计费**

- 9.1 公司提供给客户的费用、关税税率、运费、保险费或其它费用的报价仅作参考，可不经通知进行修改。报价对公司不产生约束力，除非公司书面同意以报价中规定的特定费率或金额进行货运管理或运输，且公司和客户就付款安排进行了约定。
- 9.2 公司应就向客户提供的服务的服务费用向客户开具账单（“**服务费账单**”），客户应在收到上述账单后的七（7）个日历日内（“**异议期**”）就服务费账单中发现的任何疑问或不符通知公司。若客户未能在异议期内就服务费账单提出异议，客户应被视为已同意该等账单的所有内容。双方在此明确同意，异议期之后，不得就任何服务费账单提出异议。
- 9.3 尽管有以上第9.2条规定，客户应立即向公司支付所有到期款项，不得因任何异议、反异议或抵

销而扣减或延迟。公司有权就迟延支付的款项收取利息，且不影响其可能享有的其它权利和救济。

- 9.4 当公司被指示向任何客户以外的人士收取运费、关税、费用或其它开支时，客户应在收到请求及该等人士到期不支付之证据后承担同样的责任。
- 9.5 客户应按期向公司支付所有到期款项。但是，若客户到期未支付，应在迟延期间向公司就到期未支付的款项支付百分之四（4%）的利息。

## **第10条 公司的自由和权利**

### **10.1 分包**

若公司聘用第三方提供全部或部分应提供给客户的服务，客户同意公司对该等第三方的任何作为或不作为不向客户承担直接责任，即使公司可能负责支付该等第三方的费用。但是，若客户就公司可能遭受的所有成本（包括律师费和顾客开支）对公司进行了妥善赔偿，当客户作出指示时公司应当以客户的名义对第三方采取措施。

### **10.2 代理人和分包商的条款和条件**

- 10.2.1 客户同意，所有货物应由公司根据承运人、仓库管理人、政府部门及货物可能经其占有或监管或在任何时间受其管辖的所有其他方（不论是否以公司的代理人或分包商名义行动）规定的条款和条件进行处理，只要与本条件一致。

- 10.2.2 除非另行书面同意，公司有权以其自身或客户的名义（无需通知客户）订立与以下项目有关的合同：

- (i) 由任何人士，以任何方式，在任何时间限制内提供的全部或部分物流服务；
- (ii) 仓库的位置和租赁，货物的包装或管理，或者；
- (iii) 经任何路线，以任何方式，由任何人士进行的货物运输；
- (iv) 任何类型的货物的运输，不论是否以集装箱运输，不论是舱面还是舱内运输；
- (v) 由任何人士，在任何地点（不论是在岸上还是在海上），持续任何时间的货物的仓储、包装、转运、装卸或管理；
- (vi) 容器内货物或与任何性质的其他物品一起的运输或仓储；
- (vii) 有关向客户提供的服务所进行的其自身的义务的履行；或者
- (viii) 公司认为提供服务和履行公司义务所必要或附带的行动的执行。

- 10.2.3 公司有权（但无义务）在其认为是为客户利益考虑时，在任何方面背离指示。公司应承担与之相关的任何额外责任。

- 10.2.4 公司可在任何时间遵循任何有关部门的命令或建议。公司就货物承担的责任应截止至根据该等命令或建议交付或以其它方式处置货物之时。

10.2.5 若在公司履行义务的任何阶段，公司或任何公司代理人认为，服务在整体或部分上被或可能被公司或该等其他人士尽合理努力也不能避免的任何阻碍、风险、迟延、困难或不利条件所影响，公司可在向客户或所有权人发出书面通知后，或者当合理情况下不可能发出该等通知时不发出通知，终止其义务履行和服务提供，并将货物或其任何部分在公司认为安全和方便的任何地点交于客户或所有权人处置，在此之后公司就该等货物的责任应当终止。在根据本条款终止服务之后，客户应承担货物在此地点运输、交付和/或仓储的任何额外成本以及公司可能发生的所有其它开支。

10.2.6 若交付货物或其任何部分未被客户或所有权人在公司或公司代理人进行交付的时间和地点接收，公司或该等其他人员有权要求客户或所有权人接收交付，公司或公司代理人有权将货物存放在露天或在有遮蔽的仓储场地，其风险和开支仅由客户和/或所有权人承担。

10.2.7 尽管有第10.2.5条和第10.2.6条的规定，公司有权（但无义务）按照以下方式出售或处置货物，相关费用由客户承担，且不对客户或所有权人承担额外的责任：

- (i) 就所有公司认为无法按照指示进行交付的货物，需提前二十一（21）个日历日书面通知客户；以及
- (ii) 就已毁坏、变质或变化、或可能即将产生会导致或可合理预期导致任何人士或财产的损失或损害，或违反适用法规的货物，无需通知客户。

客户应当按照要求向公司支付就上述货物出售或处置所产生的所有费用。

10.2.8 就客户或所有权人在任何时间到期的所有款项，公司对所有其占有之下的货物或与货物有关的单据有特别及一般留置权。公司有权出售或处置该等货物或单据，相关费用由客户承担，且不对客户和/或所有权人承担任何责任，在提前十五（15）个日历日书面通知客户或所有权人之后可使用该等款项支付的收益。

10.2.9 公司有权保留和收取所有经纪费、佣金、补贴及其它按照惯例由货运代理人保留或收取的酬劳。

10.2.10 公司有权对客户和/或所有权人（共同或单独地）强制执行客户在本条件下的任何责任，或要求其支付任何客户应支付但经请求后未支付的款项。

## **第11条 容器**

11.1 若容器还未被公司包装也未被填装，公司不为以下原因导致的任何内容物的损失或损害承担责任：

- (i) 容器被包装或填装的方式；
- (ii) 内容物不适宜在容器内运输，公司确认其适宜的除外；
- (iii) 客户或其供应商所提供的容器的不适当或缺陷；
- (iv) 由公司或以公司名义提供的容器的不适当或缺陷，若该不适当或缺陷的产生(a)公司对此无任何过失，或(b)本应在客户或所有权人或以两者中任何一方的名义行动的任何人士进行的合理检查中显现的；

- (v) 若容器在货运开始时未密封，公司同意密封容器的除外。
- 11.2 客户应保护公司不遭受第11.1条（第11.1条(iv)除外）包含的一个或多个事项所产生的所有责任、损失、损害、成本和支出，并进行赔偿。
- 11.3 若公司被指示提供容器，若无相反的书面请求，公司无义务提供任何特殊类型或质量的容器。

## **第12条 一般责任**

- 12.1 除非本条件中另有规定，公司不为以下情形下的任何损失或损害承担责任：
  - (i) 客户或所有权人或任何以其名义行动的人员的作为或不作为；
  - (ii) 遵循指示；
  - (iii) 货物的包装或贴标不适当，由公司按客户请求进行的该等包装或贴标除外；
  - (iv) 客户或所有权人或以其名义行动的任何人士对货物的管理、装卸或仓储；
  - (v) 货物的固有缺陷；
  - (vi) 不论因任何原因引起的暴乱、民众骚乱、罢工、闭厂、停工或劳动管制；
  - (vii) 火灾、洪水、传染病或风暴；或者
  - (viii) 公司无法避免，经合理注意无法预防其结果发生的任何事由。
- 12.2 在遵循第8.3条的前提下，公司不为以任何方式引起的货物本身以外的财产的损失、损害或成本（不论是间接的或从属的）承担违约或侵权或其它责任，也不为因任何原因导致的货物交付迟延或运输偏离带来的任何纯粹经济损失、间接或从属损失或损害、利润或市场损失承担责任。
- 12.3 在多式联运的一个特定阶段发生的货物损失或损害，公司对损害所承担的责任及责任限制应由特定阶段所使用的特定运输方式之上的相关法律管辖。若无法确定发生损失或损害的特定运输阶段，责任限制应当为涉及的运输方式所适用的所有相关法律所规定的最小责任。

## **第13条 赔偿金额**

- 13.1 除非本条件中另有规定，公司责任（不论是如何引起的）不得超出以下限制：
  - (a) 就遵循第13.3条规定的索赔以外的所有索赔，与发生损失、损害、误导、交付错误，或者引起索赔的货物有关的服务费用的金额；
  - (b) 就本条件规定未排除的迟延索赔，公司就迟延的货物收取的费用的金额。
- 13.2 即使货物损失或损害的原因未被解释，第13.1条中提及的责任限制仍应适用。
- 13.3 在以下情形下，公司可接受超出本条件中规定的限制的责任：
  - (i) 公司已在从客户处收到货物之前书面同意接受超出本条件中规定的限制的责任；以及

- (ii) 客户已支付或同意支付公司接受该等新增责任的额外费用。公司额外费用的详情将在请求后提供。
- 13.4 公司根据第13.3条向客户支付的赔偿应参考客户于交付货物给公司时所声明的货物的账单价值，并加上客户支付的运费和保险费（如有）进行计算。
- 13.5 在适用第13.4条的情形下，若客户未声明货物的账单价值，赔偿应参考该等货物在交付给客户或所有权人或本应当做此交付的时间和地点的服务费用/价值的金额进行计算。货物的价值应根据货物的当前市场价格来决定，或者若没有商品交易价格或当前市场价格，则参考同类同质量物品的一般价格。
- 13.6 除非于收取前书面同意，公司不接受或处理金银、硬币、宝石、珠宝、古董、艺术品或其他贵重货物（统称“**贵重货物**”）。若客户仍然在公司未事先书面同意的情况下交付了任何该等贵重货物给公司，或者致使公司管理或处理了任何该等货物，就该等贵重货物或与之相关而引起的任何责任，公司概不承担。

#### **第14条 出险通知 – 时效**

- 14.1 除以下情形之外，公司不承担任何责任：
- (i) 公司或公司代理人在以下第14.2条中所述的日期之后十四（14）个日历日内，或者在适用的国内或国际法规中规定的任何更短时限内，收到任何书面索赔通知，以及
  - (ii) 在第18条所规定的适当的机构提起诉讼，且在以下第14.2条所规定的日期之后九（9）个月内公司收到相应的书面通知。
- 14.2 为第14.1条之目的，适用的日期为：
- (i) 在货物有损害的情形下，为交付货物的日期；
  - (ii) 在货物有迟延、损失或未能交付的情形下，为货物本应交付的日期；
  - (iii) 在其它情形下，为引起索赔的事件。

#### **第15条 共同海损**

客户和所有权人应保护公司不遭受任何可能对公司提起的共同海损性质的索赔，并进行赔偿，客户和所有权人应当应公司要求就此做出保证。

#### **第16条 其它事项**

- 16.1 任何由邮政送达的通知应被视为在其被邮寄至该等通知的收件人的地址（公司所知晓的最新地址）之日后的第三（3）个日历日送达。
- 16.2 本条件所规定的责任抗辩和限制应适用于任何针对公司的行动，不论该等行动是建立在违约还是侵权的基础之上。

- 16.3 若任何开展的营业活动之上有强制性适用的任何法律，则就该等营业活动，本条件应被视为遵循该等法律，且本条件中任何条款不得被解释为公司在该等法律之下放弃其任何权利或豁免，或增加其任何责任，并且若本条件中的任何部分与该等法律在任何程度上有冲突，该部分应就该等营业活动而被放弃，但应至不再有冲突为止，不涉及更多。
- 16.4 本条件中的条款或条款组的标题仅为指示之目的。
- 16.5 本条件以中、英文书就，若有任何冲突、不一致或不同，以英文版本为准。

## **第17条 不可抗力**

- 17.1 在发生不可抗力情形下，公司和客户都应被免除履行或被允许延迟履行本条件项下的服务和义务。
- 17.2 各方同意在发生不可抗力事件后立即向另一方发送通知，阐明其过程和可能持续的时间，并尽可能迅速地补发一份书面通知。该方应在该等不可抗力事件结束时立即通知另一方。
- 17.3 本条件中的“不可抗力事件”应指火灾、洪水、爆炸、台风、沙暴、风暴、灾难、传染病、罢工、闭厂、劳动力短缺或劳动争议、战争、其它自然灾害、政府行为或要求、意外事故、致使一方无法履行其在本条件项下的任何义务，或其发生导致无法取得原料、电力、设备或运输的法律法规或政府政策的改变、另一方的违约、或者任何其它超出该方控制之外的无法预见的事由。

## **第18条 法律和管辖**

- 18.1 本条件和任何因公司的服务引起的或与之相关的索赔或争议应遵循中华人民共和国的法律法规。但是，若适用的中华人民共和国法律法规没有和特定事项有关的任何规定，则应适用海牙维斯比规则或任何相关的国际公约。
- 18.2 双方应尽力通过友好协商解决本条件、或其违约、提前终止或无效引起的或与之有关的任何争议、争论或索赔（统称“**争议**”）。若一方向另一方提交争议后的一（1）个月内无法通过协商达成解决方案，则任何一方可将争议提交至国际商会的国际仲裁庭，根据国际商会的仲裁规则（“**规则**”）由一位或多位按照该规则委任的仲裁员进行最终解决。
- 18.3 仲裁地点应为香港，仲裁语言应为英语。
- 18.4 该等仲裁机构的裁决应为最终裁决，对双方均有约束力。

## **第二部分：公司作为代理人**

### **第19条 特别责任和赔偿条件**

- 19.1 在公司作为货运代理人的情况下，公司不与客户签订或声称签订货物运输、仓储或管理或与之有关的任何其它实际服务的合同，且仅以客户名义与第三方订立合同以获取该等服务，以使客户和该等第三方之间建立直接的合同关系。



- 19.2 公司不为以上第19.1条中提及的该等第三方的作为和不作为承担责任。
- 19.3 公司作为货运代理人时，拥有客户授权和充分的权力以客户的名义订立合同，并以此通过该等合同和行为在所有方面约束客户，不论是否背离指示。
- 19.4 除公司的过失导致的以外，客户应保护公司不遭受根据第19.1条获取客户的需求而订立的任何合同引起的所有责任、损失、损害、成本或支出，并进行赔偿。

## **第20条 费率选择**

若根据运输、仓储和/或管理货物的人士所承担的责任的范围或程度，存在费率选择，除非另行书面约定，公司不以客户名义作出任何价值声明。

## **第三部分：公司作为委托人**

### **第21条 特别责任条件**

- 21.1 若公司为执行指示作为委托人订立合同，公司应亲自执行指示，或促使承运人执行指示。根据本条件中的规定，公司应对从接管货物到交付期间所发生的货物的损失或损害承担责任。
- 21.2 若公司作为委托人订立合同并将服务提供进行分包，且可证明货物损失或损害或者与之有关的损失或损害是在货物处于分包商管理或监管之下时被引起或导致的，则公司享有公司与分包商之间的合同以及任何法律、法令或法规中规定该等分包商所享有的所有权利、责任限制和免除，并且公司对客户所负的责任不得超出公司从该等分包商处所追回的金额（如有）。
- 21.3 即使本条件中有其它相反规定，若货物损失或损害发生在公司作为委托人之时，公司的责任应根据任何国际公约或国内法律的规定来确定，该等规定：
- (i) 不得由私人合同进行对索赔人不利的背离；并且
  - (ii) 如果索赔人与特定服务的实际提供商就发生损失或损害的该服务或运输阶段订立了单独和直接的合同，且收到了在适用上述国际公约或国内法律时应当出具的作为证据的特定单据，则该等规定应适用。
- 21.4 即使本条件中有其它相反规定，若可证明货物损失或损害发生在海洋或内陆河道，且第21.3条的规定不应适用，则公司的责任应由海牙维斯比规则确定。海牙维斯比规则中提及海运之处应视为包含了内陆河道运输，且海牙维斯比规则应作相应解释。
- 21.5 虽然有第21.2、21.3和21.4条的规定，若货物损失或损害发生在海洋或内陆河道，且所有权人、租船主或运输船舶驾驶者有权限制其法定责任，设立有限的基金，公司责任应限于在该等限制基金中分配给货物的份额。
- 21.6 若本条件和任何提单、海运运货单或空运运货单、托运单（包括经国内航空、陆路、铁路、水路进行的运输）以及公司作为委托人出具的或以其名义出具的仓单的条件之间有任何不一致，应以任何上述单据中的条件为准，但仅以该等不一致之处为限，不涉及其它。

21.7 即使本条件中有其它相反规定，当公司就货物空运作为委托人时，公司对该等货物的损失或损害的责任应根据蒙特利尔公约来确定。