Standard Trading Terms and Conditions of Logwin Air + Ocean China Ltd.

PART I : GENERAL CONDITIONS
Application
1. (A) Subject to sub-clause (B) below, all services of the Company whether gratuitous or not are subject to these Conditions.
(i) The provisions of Part I shall apply to all such services.
(ii) The provisions of Part II shall only apply to the extent that such services are provided by the Company as agents.
(iii) The provisions of Part III shall only apply to the extent that such services are provided by the Company as principals.
(B) Where a document bearing a title of or including "bill of lading" (whether or not negotiable), or "waybill" or "Air Waybill" is issued by or on behalf of the Company and provides that the Company contracts as carrier, the provisions set out in such document shall be paramount in so far as such provisions are inconsistent with or repugnant to these Conditions.
2. All services are provided by the Company as agents except in the following circumstances where the Company acts as principal:
(A) where the company performs any carriage, handling or storage of Goods but only to the extent that the carriage is performed by the Company itself or its servants and the Goods are in the actual custody and control of the Company, or
(B) to the extent that the Company expressly agrees in writing to act as a principal, or
(C) to the extent that the Company is held by a court of law to have acted as a principal.
3. Without prejudice to the generality of clause 2,
(A) the charging by the Company of a fixed price for a service or services of whatsoever nature shall not in itself determine or be evidence that the Company is acting as an agent or a principal in respect of such service or services;
(B) the supplying by the Company of their own or leased equipment shall not in itself determine or be evidence that the Company in acting as an agent or a principal in respect of any carriage, handling or storage of Goods;
(C) the Company acts as an agent where the Company procures a bill of lading or other document evidencing a contract of carriage between a person, other than the Company, and the Customer or Owner;
(D) the Company acts as an agent and never as a principal when providing services in respect of or relating to customs requirements, taxes, licenses, consular documents, certificates of origin, inspection, certificates and other similar services.
Definitions and Interpretations
4. In these conditions the following words and expressions have the following meanings unless the context otherwise requires:-
(A) "Ancillary Services" includes services of arranging for the storage, warehousing, collection, delivery, local transportation, insurance, customs clearance, packing, unpacking and other handling of goods and other services relating or ancillary to the Principal Services.
(B) "Authority" A duly constituted legal or administrative person, acting within its legal powers and exercising jurisdiction within any nation, state, municipality, port or airport;
(C) "Company" is Logwin Air + Ocean China Ltd.
(D) "Conditions" means the entire undertakings, terms, conditions and clauses embodied herein and includes the Company's terms and conditions printed on the front of the Shippers' Instructions form and of the Company's form of transport document (including the Company's house air waybill or house bill of lading).
(E) "Customer" means any person at whose request or on whose behalf the Company undertakes any business, or provides advice, information or services, and includes the party named as "shipper" or "consignor" on the front of the Shippers' Instructions form and on the Company's house air waybill or house bill of lading.
(F) "Container" includes any container, textainer, flexitank, trailer, transportable tank, flat, pallet or any article of transport used to carry or consolidate goods and any equipment of or connected with any of the foregoing.
(G) "Dangerous Goods" includes goods which are or may become of a dangerous, inflammable, radio-active or damaging nature and goods likely to harbour or encourage vermin or other pests;
(H) "Goods" includes the cargo, any container and equipment not supplied by or on behalf of the Company, in respect of which the Company provides a service;
(I) "Hague Rules" means the provisions of the International Convention for the Unification of certain rules Relating to Bills of Lading signed at Brussels on 25th August 1924;
(J) "Hague-Visby Rules" means the International Convention for the Unification of Certain Rules of Law relating to Bills of Lading signed at Brussels on 25th August 1924 (as amended by the Protocol signed at Brussels on 23rd February 1968).
(K) "Instructions" means a statement of the Customers specific requirements and includes the instructions specified on the front of the Shipper's Instructions form and on the Company's form of transport document (including the Company's house air waybill or house bill of lading)
(L) "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;
(M) "Person" includes persons or any body or bodies corporate;
(N) "Principal Services" means the services of arranging for the transportation or carriage of goods by air and/or sea.
(O) "Services" means the services to be provided by the Company and includes the Principal Services and the Ancillary Services.
(P) "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, 28th September 1955, whichever may be applicable.
5. 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).
6. 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.
7. 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.
8. 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 right and remedies of the Company provided in these Conditions shall be cumulative and not exclusive of any rights or remedies otherwise provided by law.
9. 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, the legality and enforceability of the remaining provisions of these Conditions shall not in any way be affected or impaired thereby.
Obligations of customer
10. The Customer entering into any transactions or business with the Company here warrants that 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.
11. When the Customer acts as the agent of the Owner, the Customer also accepts personal liability to the Company (but without prejudice to any of the rights or remedies of the Company against the Owner) and so that in respect of such transaction or business the Company is entitled to enforce its rights or remedies (including without limitation the right to recover any sum payable to the Company) against the Customer and the Owner jointly and severally.
12. The Customer warrants that 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.
13. The Customer shall give sufficient and executable instructions.
14. The Customer further warrants that:
Proper packing.
(A) The Goods, the subject of any Services provided by the Company, have been properly and sufficiently packed, labelled and/or prepared, and that the Company has no liability for any loss of or damage to the Goods which are improperly or insufficiently packed or prepared, no matter how such loss or damage is caused.
Transport Unit
(B) Where the Goods delivered by or on behalf of the Customer are already carried in or on containers, trailers, flats, tilts, railway wagons, tanks, igloos, or any other unit load device (each hereafter individually referred to as "transport unit") then,
(i) the transport unit is in good condition, is suitable to carry the Goods loaded therein or thereon, and is suitable for the intended carriage and other handling; and
(ii) the Goods are suitable for carriage and other handling in or on the transport unit and has been properly and competently packed or loaded in or on the transport unit.
Description of Goods
(C) All descriptions, values and other particulars of the Goods furnished to the Company for customs, consular and other purposes are true, complete and accurate, it being the duty of the Customer to provide such information to the Company and to ensure that such information is true complete and accurate.
Fitness of Goods
(D) In addition and without prejudice to any provisions of Clauses 27 (dangerous goods) and 28 (bullion), the Goods are fit and suitable for the carriage (international as well as local), storage, packing, unpacking and other handling in accordance with, pursuant or related to incidental to the Customer's instructions.
Delivery of Goods
(E) 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 shall comply with all necessary formalities and procedures.
Contractual status of the Company
15. Save as provided in Part III, Services are provided by the Company as agents of its Customers, except that, subject to Clause 32(B), the Company itself may provide (instead of arranging to provide) the Ancillary Services.
16. The Company shall be entitled to perform any of its Services or exercise any of its powers or discretions hereunder by itself or its parent, subsidiary or associated companies. In the absence of agreement to the contrary any contract to which these Conditions may apply is made by the Company on its own behalf and also as agent for and on behalf of any such parent, subsidiary or associated company and any such company shall be entitled to the benefit of these Conditions.
17. It shall not be construed that any Services are provided by the Company other than as an agent of the Customer by reason only of any one or more of the following:-
(a) the Company issuing its own transport document including its house air waybill or air consignment note or house bill of lading or freight forwarder cargo receipt;
(b) the Company charges an inclusive price;
(c) the Goods are forwarded, carried, transported, stored or otherwise handled together or in consolidation with other goods.
Liberties and rights of Company
18. The Company shall be entitled and is so authorised, except insofar as has been otherwise agreed in writing, to enter into contracts on behalf of itself or the Customer and without notice to the Customer,
(A) for the carriage of Goods by any route, means or person,
(B) for the carriage of Goods of any description whether containerised or not on or under the deck of any vessel,
(C) for the storage, packing, unpacking, (local) transportation transhipment, loading, unloading or other handling of Goods by any person at any place whether on shore or afloat and for any length of time,
(D) for the carriage or storage of Goods in containers or with other goods of whatever nature,
(E) for the performance of its obligations, and to do such acts or enter into other contracts or arrangements as in the opinion of the Company may be necessary or incidental to the performance of the Company's obligations.
19. (A) The Company shall be entitled but under no obligation, to depart or deviate from the Customer's instructions in any respect if in the opinion of the Company there is good reason to do so in the Customer's interest or is otherwise expedient to do so and it shall not thereby incur any additional liability.
(B) The Company may at its discretion 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.
20. The Company is authorised by the Customer to act or to enter into any contract or arrangement without prior consultation with or further authorisation from the Customer, and the Company is not required, unless specifically requested by the Customer in writing, to inform the Customer of the terms and conditions or details of the contracts or arrangements or acts entered into or taken by the Company.
21. Without prejudice to the generality of the foregoing, the Company is authorised to agree with any 3rd Party the charges payable to such 3rd Party without reference to or further authorisation from the Customer. It being agreed that if the difference between the charges payable by the Company to the 3rd Party, and the charges payable by the Customer to the Company is the Company's commission or remuneration or profit. The Customer waives any and has no right of enquiry of the charges payable to the 3rd Party and the Company is not under any duty to account to the Customer for the Company's commissions, remunerations or profits.
22. The Company is authorised but is not obliged to inspect or arrange for the Goods to be inspected.
23. The Company is not obliged to arrange for the Goods to be carried, forwarded, packed, unpacked stored or handled separately. The Company is authorised (but is not obliged) to consolidate or arrange to be consolidated the Goods of the Customer with other goods.
24. The Customer expressly agrees to be bound in all respects by any act or contract or arrangement done or entered into by the Company pursuant to the aforesaid authorisations.
Where the Company contracts (on behalf of the customer) in its own name
25. Where the Company enters into a contract on behalf of the Customer in its own name with any 3rd Party for any purpose, the Company is not itself a carrier for the purposes of the Carriage by Air Ordinance or the Carriage of Goods by Sea Ordinance (or their equivalent) or for any other purposes, nor does the Company make or purport to make any contract as a principal with the Customer for the carriage, storage, packing, unpacking, (local) transportation, transhipment, loading, unloading or other handling of the Goods. The Company's sole obligation is to procure contracts for the carriage, storage, packing, unpacking (local) transportation, transhipment, loading, unloading or other handling of the Goods by other persons.
26. 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 any 3rd Party expressly contained or implied in the Company's contract with such 3rd Party. The Customer shall not seek to impose on such 3rd Party any liability greater than that accepted by such 3rd Party under such contract.
Special instructions, goods and services
Dangerous goods
27. (A) 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.
(B) If the Customer is in breach of sub-clause (A) above he shall be liable for all expenses losses or damages 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 and any other liabilities whatsoever arising in connection therewith and the 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.
(C) If the Company agrees to accept Dangerous Goods and then in the opinion of the Company or any other person 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 without any liability to the Company or any other person in whose custody or control they may be at the relevant time.
Bullion etc.
28. Except under special arrangements previously made in writing the Company will not accept or deal with bullion, coins, precious stones, jewellery, valuable, antiques, pictures, livestock or plants. Should the Customer nevertheless deliver any such goods to the Company or cause the Company to handle or deal with any such goods otherwise than under special arrangements previously made in writing, the Company shall be under no liability whatsoever for or in connection with such goods or any part thereof (including without limitation any loss or damage or non-delivery or misdelivery or delay) howsoever caused and notwithstanding that the value may be shown, declared or indicated on any documents accompanying the shipment.
Temperature control
29. 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 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. If the above requirements are not complied with the Company shall not be liable for any loss of or damage to the Goods caused by such non-compliance.
Deviation
30. 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 Goods. Further, if in the 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 authorised 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 is done at the sole risk of the Customer or the Owner.
Warehousing
31. Pending forwarding or delivery, Goods may be warehoused or otherwise held at the risk of the Customer or the Owner at any place at the sole discretion of the Company and the cost therefor shall be for the account of the Customer.
Insurance
32. (A) No insurance will be effected except upon express instructions given in writing by the Customer and accepted in writing by the Company. All insurances effected by the Company are subject to the usual exceptions and conditions of the policies of the insurance company or underwriters taking the risk. Unless otherwise agreed in writing, the Company shall be under any obligation to effect a separate insurance but may declare it on any open or general policy. The Company is an agent in respect of the effecting of insurance and should the insurers dispute their liability for any reason the insured shall have recourse against the insurers only and the Company shall not be under any responsibility or liability whatsoever in relation thereto notwithstanding that the premium upon the policy may not be at the same rate as that charged to the Company by its Customer.
(B) In so far as the Company agrees to arrange insurances, the Company acts solely as the agent of the Customer using reasonable efforts to arrange such insurance. The Company does not warrant or undertake any such insurance will be accepted by the insurance company or underwriters.
Declaration of value
33. (A) Except in accordance with express instructions previously received in writing and accepted in writing by the Company, the Company shall not be obliged to make any declaration for the purposes of any statute, convention or contract as to the nature or value of any Goods or as to any special interest in delivery.
(B) Without prejudice to the generality of Clause 33(A) where there is a choice of rates according to the extent or degree of the liability assumed by carriers, warehemen or others, the Goods will be stored, forwarded, dealt with, etc. 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 in writing.
(C) 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 Clause 33(A) and Clause 33(B) above.
Delivery/release
34. Unless otherwise previously agreed in writing or otherwise provided for under the provisions of a document signed by the Company, instructions relating to the delivery or release of Goods against payment or against surrender of a particular document shall be in writing and the Company's liability shall not exceed that provided for in respect of misdelivery of Goods.
Departure/Arrival Dates
35. Unless otherwise previously agreed in writing that the Goods shall depart or arrive by a particular date, the Company accepts no responsibility for departure or arrival dates of Goods.
Duties
36. The Customer shall be liable for any duties, taxes, levies, deposits or outlays of any kind levied by any Authority 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.
No duty to preserve rights
37. 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 right of the Customer or the Owner in relation to any claim or remedy which the Customer or Owner may have against any third parties.
General Indemnities
38. (A) The Customer and Owner shall defend, indemnify and hold harmless the Company from and against all claims, liabilities, losses, damages, costs and expenses arising from the nature of the Goods unless caused by the Company's negligence, or (B) out of the Company acting in accordance with the Customer's or Owner's instructions, or (iii) arising from a breach of warranty or obligation by the Customer or (iv) arising from the Customer's inaccurate or incomplete or ambiguous information or instructions or (v) arising from the negligence of the Customer or Owner.
(B) 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, loss and damage whatsoever incurred or sustained by the Company in connection therewith.
(C) 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 from and against all claims, liabilities, losses, damages, costs and expenses arising out of any other person relying on such advice or information.
(D) (i) The Customer undertakes that no claim shall be made against any officer, 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 or any services provided or to be provided by the Company. If any such claim should nevertheless be made, the Customer shall indemnify the Company against all consequences thereof.
(ii) Without prejudice to the foregoing, every such officer, servant sub-contractor or agent shall have the benefit of all provisions herein, as if such provisions were expressly for their benefit. In entering into this contract the Company, to the extent of those provisions, does so not only on its own behalf, but as agent and trustee for such officers, servants, sub-contractors and agents.
(iii) 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 (without limitation) all claims, costs and demands arising from or in connection with the negligence of the Company, its officers, its servants, subcontractors and agents.
(iv) In this clause, "sub-contractors" includes direct and indirect sub-contractors and their respective servants, agents and employees.
(E) The Customer shall be liable for the loss, damage, contamination, soiling, detention or demurrage before, during and after the Carriage of property (including, but not limited to, Containers) of the Company or any person or vessel referred to in (D) above caused by the Customer or Owner or any person acting on behalf of either of them or for which the Customer is otherwise responsible.
Charges
39. (A) The Customer is primarily 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.
(B) The Customer shall pay to the Company all sums immediately when due without deduction or deferment on account of any claim, counterclaim or set-off. Payment to the Company is due as soon as the invoice is rendered. Payment shall be made in cash unless otherwise agreed by the Company.
(C) The Company at its discretion may request an advance to cover fees, duties, charges, taxes and/or other expenses payable before the Company's invoice is rendered. Forthwith upon such request being made, the Customer shall make such advance to the Company.
(D) 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 remain responsible for the payment of the same. The Customer shall forthwith upon demand pay the Company such freight, duties, fees, charges and other expenses or any balance thereof together with interest (if applicable) without deduction or deferment on account of any claim, counterclaim or set off (whether or not demand is made to such other person). Without prejudice to the generality of the foregoing, this provision shall apply if (inter alia) the Goods are refused by the consignee or other person entitled to delivery or confiscated by the customs or any Authority or for any reason it is in the opinion of the Company not practicable or possible to obtain delivery of the Goods.
(E) On all amounts overdue to the Company, the Company shall be entitled to interest calculated on a monthly basis from the date such accounts are overdue until payment thereof at 4 per cent above base rate month (compounded monthly) of the Hong Kong and Shanghai Banking Corporation during the period that such amounts are overdue.
Quotations
40. (A) 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, notwithstanding acceptance of the quotations by the Customer, shall be at liberty to revise quotations or charges with or without prior notice in the event of changes occurring in currency exchange risks, rates of freight, insurance premiums or any charges applicable to the Goods.
(B) 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.
Disposal of goods
41. If at any time the performance of the Company's obligations, in the opinion of the Company or any person whose services the Company makes use of, is or is likely to be affected by any hindrance, risk, delay, difficulty or disadvantage whatsoever and which cannot be avoided by reasonable endeavours by the Company or such other persons, the Company may, on giving 14 days notice in writing to the Customer or Owner or without notice where it is not reasonably possible to give such notice, treat the performance of its obligations as terminated and place the Goods or any part of them at the Customer or 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. The Customer shall be responsible for any additional costs of carriage to and delivery and storage at such place and all other expenses incurred by the Company.
Lien
42. Notice of arrival of the goods will be sent to the notify party or the consignee by ordinary methods. The Company is not liable for the non-receipt of such notices. Any charges including storages incurred pending collection will be for the account of the Customer.
43. Without prejudice to any other lien, rights or remedies which the Company may have (including without limitation under Clause 42 and Clause 44) if delivery of the Goods or any part thereof is not taken by the Customer or Owner or other person entitled to the delivery of the same at the time and place when and where the Company, or any person whose services the Company makes use of, is entitled to call upon the Customer or Owner or other person entitled to the delivery of the same to take delivery thereof, the Company or such other person shall be entitled (but is not obliged) to store or cause to be stored the Goods or any part thereof in the open or under cover at the sole risk and expense of the Customer 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 shall upon demand be paid by the Customer to the Company.
44. (A) Notwithstanding Clauses 41, 42 and 43, the Company shall be entitled but under no obligation at the expense of the Customer payable on demand and without any liability to the Customer and Owner, to sell or dispose of (or cause to be sold or disposed)
(i) on giving 14 days notice in writing to the Customer at the discretion of the Company cannot be delivered as instructed either because they are insufficiently or incorrectly addressed or because they are not collected or accepted by the consignee or for any other reasons, and
(ii) without notice Goods which have perished, deteriorated or altered, or are in immediate prospect of doing so.
(B) All charges and expenses arising in connection with the storage and sale or disposal of the Goods as aforesaid shall be paid by the Customer and payment or tender of the net proceeds of any sale after deduction of such charges and expenses shall be equivalent to delivery.
45. The Company shall have a particular and general lien and a right of detention on all Goods or documents relating to Goods in its possession for all sums due either in respect of such Goods, or for any particular or general balance or other monies due from the Customer or the Owner to the Company in respect of other goods or Services. If any such sums due to the Company are not paid within 14 days after written notice has been given to the Customer that such Goods are being detained, the Goods and/or documents relating thereto may be sold by the Company at the sole discretion of the Company at the expense of the Customer, and the proceeds (net of the expenses in connection with such sale) applied in or towards satisfaction of such indebtedness, and the Company shall not be liable for any deficiencies or reduction in value received on the sale of the Goods, nor shall the Customer be relieved from the liability merely because the Goods have been sold.
46. The Rights of the Company under Clauses 42 to 45 are independent and cumulative.
Brokerage
47. 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.
Containers
48. (A) If a Container has not been packed nor stuffed by the Company, the Company shall not be liable for loss of or damage to the contents 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 that where the Container has been supplied by or on behalf of the Company this paragraph (iii) shall only apply 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 Owner or person acting on behalf of either of them.
(iv) if the Container is not sealed at the commencement of the carriage except where the Company has agreed to seal the Container.
(B) The Customer shall defend, indemnify and hold harmless the Company against all liability, loss, damage, costs and expenses arising from one or more of the matters covered by (A) above except for (A)(iii)(a) above.
(C) 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.
(D) Once the Container has been delivered to the Company, any inspection/checking of any of the contents of the Container involving the opening of the Container door or packing must be applied for in writing to the Company. Without the Company's written approval, no person is permitted to carry out such inspection or survey. Any inspection carried out with the Company's approval shall be at the Customer's own risk and the Company shall not be responsible for any contamination, deterioration, loss or damage to the Goods sustained thereafter.
General Liability
49. Notwithstanding any negligence on the part of the Company, its servants or agents or sub-contractors or other persons for whom the Company is responsible, the Company shall not be responsible or liable for any damage to or loss or non- delivery or mis-delivery or mis-direction of Goods or for any delay or deviation in respect of the transportation or delivery or other handling of the Goods, unless it is proved that such damage, loss, non-delivery, mis-delivery, mis-direction, delay or deviation occurred while the Goods were (i) in the actual custody of the Company and (ii) under its actual control and (iii) that the damage, loss, non delivery, mis-delivery, mis-direction, delay or deviation was due to the wilful neglect or wilful default of the Company or its own servants.
50. Notwithstanding any negligence on the part of the Company, its servants or agents or sub-contractors or other persons for whom the Company is responsible, the Company shall not be liable for any non-compliance or mis-compliance with instructions given to it unless it is proved that such noncompliance or mis- compliance was caused by the wilful neglect or wilful default of the Company or its own servants.
51. Save as provided in Clause 49 or Clause 50, the Company shall be under no liability whatsoever and howsoever arising and whether in respect of or in connection with the Goods or business advice, information or Services or otherwise, and whether or not there is negligence on the part of Company, its servants or agents or sub-contractors or other persons for whom the Company is responsible.
52. Further and without prejudice to the generality of the preceding provisions of clauses 49, 50 and 51, the Company shall not in any event, whether under Clause 49 or Clause 50 or otherwise, be under any liability whatsoever for:
(a) any special, incidental, indirect or consequential or economic loss or damage (including without limitation loss of market, profit, revenue, business or goodwill);
(b) any loss or damage or expense arising from or in any way connected with fire, flood or storm or the consequence of fire, flood or storm; or
(c) riots, civil commotion; strikes, lockouts, stoppage or restraint of labour from whatsoever cause;
in each case 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.
Amount of Compensation
53. Save where Clause 55 or Clause 56 is applicable, the liability of the Company, howsoever arising, and notwithstanding that the cause of loss or damage be unexplained shall not exceed the following;
(A) in respect of all claims other than those subject to the provisions of sub-clause (B) below, whichever is the least of
(i) the value of, or
(ii) RMB10 per gross kilogram of, or
(iii) RMB200 per shipping package or unit of the Goods lost, damaged, non-delivered, mis-delivered, mis-directed, deviated 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.
(C) In no event shall the Company's liability under one or more of sub-clause (A) to (B) exceed US$100,000 per event or events arising from the same or common cause.
54. (A) Compensation shall be calculated by reference to the invoice value of the Goods.
(B) If there is 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 fixed according to the current market 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.
55. If any one or more of the Hague Rules, the Hague-Visby Rules (as amended by the Protocol signed at Brussels on 21st December 1979), the Warsaw Convention and the Guadalajara Convention are compulsorily applicable by law, the relevant limitation amounts set out therein as applied by the applicable legislation will apply. In all other circumstances the provisions of clause 53 shall apply.
56. By special arrangement agreed in writing, the Company may accept liability in excess of the limit set out in Clause 53 not exceeding the value of the Goods or the agreed value, whichever is the lesser if the Customer agrees to pay and has paid the Company's additional charges for accepting such increased liability. Details of the Company's additional charges will be provided upon request.
Notice of Claim, Time Bar
57. (A) The Company shall be discharged of any and all liability whatsoever unless:
(i) Notice of any claim is received in writing by the Company at its registered office or its principal place of business in Shanghai, China within 14 days after the date specified in (B) below, and
(ii) Suit is brought in the proper forum specified in Clause 66 and written notice thereof received by the Company at its registered address or its principal place of business in China within 9 months after the date specified in (B) below.
(B) (i) in the case of damage to Goods, the date of delivery of the Goods;
(ii) in the case of loss or non-delivery or mis-delivery or delay in delivery of the Goods, the date that the Goods should have been delivered; and
(iii) in any other case, the date of the event giving rise to the claim.
General Average
58. The Customer shall defend, indemnify and hold harmless the Company in respect of any general average or any claims of a General Average nature which may be made on the Company and the Customer shall provide such security as may be required by the Company in this connection.
Collect on delivery (COD) shipments
59. Goods received with Customer's or other person's instructions 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.
Miscellaneous
60. Any notice served by post shall be deemed to have to be given on the third day following the day on which it was posted to the address of the recipient of such notice last known to the Company.
61. The defences and limits of liability provided for by these Conditions shall apply in any action against the Company whether such action be founded in contract or tort or bailment or otherwise.
62. The Company shall have the right to enforce against the Owner and the Customer 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.
63. All and any advice information or Services provided by the Company gratuitously is provided on the basis that the Company will not accept any liability whatsoever therefor, whether in tort or bailment or otherwise.
64. All and any business undertaken by the Company is transacted subject to these Conditions and each of these Conditions shall be deemed to be incorporated in and to be a condition of any contract between the Company and the Customer. All other terms and conditions are hereby excluded. 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 having been paid in advance by the Customer to the Company and subject to such arrangements having been reduced into writing and signed by an authorised officer of the Customer and by an authorised officer of the Company. Save as aforesaid every variation, cancellation or waiver of these Conditions must be in writing and must be signed by a Director of the Company. Notice is hereby given that no other person has or will be given any authority whatsoever to agree to any variation, cancellation or waiver of these Conditions.
65. If any legislation is compulsorily applicable to any business undertaken or Services provided, these Conditions shall, as regards such business or Services, be read as subject to such legislation but 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 or Services be over-ridden to that extent and no further.
Jurisdiction and Law
66. These Conditions and any claim or dispute arising out of or in connection with the services of the Company shall be subject to China law and the exclusive jurisdiction of the Courts of China.
PART II : COMPANY AS AGENT
Special Liability and Indemnity Conditions
67. (A) To the extent that the Company acts as an agent, the Company does not make or purport to make any contract with the Customer for the carriage, storage or handling of the Goods nor for any other physical service in relation to them and acts solely on behalf of the Customer in securing such services by establishing contracts with third parties so that direct contractual relationships are established between the Customer and such third parties.
(B) The Company shall not be liable for the acts and omissions of such third parties referred to sub-clause (A) above.
68. (A) The Company when acting as an agent has the authority of the Customer to enter into contracts on the Customer's behalf and to do such acts so as to bind the Customer by such contracts and such acts in all respects notwithstanding any departure from the Customer's instructions.
(B) 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, loss, damage, costs or expenses arising out of any contracts made in the procurement of the Customer's requirements in accordance with Clause 67.
Choice of Rates
69. Where there is a choice of rates according to the extent or degree of liability assumed by persons carrying, storing, handling the Goods, no declaration of value where optional will be made unless otherwise agreed in writing.
PART III: COMPANY AS PRINCIPAL
Special Liability Conditions
70. Where, in respect of a transaction, the Company is held by a court of competent jurisdiction to be a carrier, the Company shall be entitled to all the rights, immunities, exceptions and limitations conferred on the carrier by any applicable law or legislation, and these Conditions shall be overridden to the extent that they are inconsistent with such rights, immunities, exceptions and limitations, but without prejudice to the operation of Clause 65.
71. Where the Company contracts as a principal and sub-contracts the performance of his services and it can be proved that the loss of or damage to or in respect of the Goods arose or was caused whilst the Goods were in the care or custody of the sub-contractor, the Company shall have the full benefit of all rights, limitations and exclusions of liability available to such sub-contractor in the contract between the Company and such sub-contractor and in any law, statute or regulation and the liability of the Company shall not exceed the amount recovered, if any, by the Company from such sub-contractor.
Air Carriage
72. If the Company is or is deemed to be a carrier in respect of a carriage of 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 to cargo. Agreed stopping places are those places (other than the places of departure and destination) shown under requested routing and/or those places shown in carriers' timetables as scheduled stopping places for the route. The address of the first carrier is the airport of departure."
"the first carrier's name may be abbreviated on the fact 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 neeessity) are those places, except 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 stopped places for the route. Carriage to be performed under the air waybill by several successive carriers is regarded as a single operation."
73. If the Company itself performs (instead of arranging for the performance of) Ancillary Services, the Company is entitled:
(a) to perform any local transportation of the Goods by any route or by any means;
(b) to store, pack, unpack, load, unload or otherwise handle the Goods at any place or places and for any length of time
AND to do all such other acts as may be necessary or incidental thereto in the absolute discretion of the Company. The Company may (but is not obliged to) depart or deviate from the Customer's instructions if in the opinion of the Company such departure or deviation is necessary or desirable in the Customer's interests or is otherwise expedient.
74. 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.
75. At the Company's sole discretion, if the loss of or damage to the Goods occurred at sea or on inland waterways, and the Owner, Charterer or operator of the vessel establishes a limitation fund, the liability of the Company shall be limited to the proportion of the said limitation fund allocated to the Goods.
76. Both-to-Blame Collision Clause
The current Both-to-Blame Collision Clause as adopted by BIMCO is incorporated in these conditions.