

# TRADING CONDITIONS

## **PART I: General Conditions**

### **1. Application**

- 1.1 Subject to Clause 1.2, all logistics services of the Company whether gratuitous or not are undertaken subject to these Conditions and not otherwise and:
- (a) The provisions of Part I shall apply to all such logistics services.
  - (b) The provisions of Part II shall only apply to the extent that such logistics services are provided by the Company as agents.
  - (c) The provisions of Part III shall only apply to the extent that such logistics services are provided by the Company as principals.
- 1.2 Where a document is issued by or on behalf of the Company and bears the title of, or includes the words, "bill of lading" (whether or not negotiable), sea or air "waybill", consignment note (including carriage by internal air, road, railway, waters), warehouse receipt and provides that the Company contracts as logistics services provider, the provisions set out in that document, if inconsistent with these Conditions, shall be paramount and prevail over these Conditions to the extent that such provisions are inconsistent but no further.
- 1.3 Any variation, cancellation or waiver of these Conditions (or any of them) must be in writing signed by a Director of the Company. No other person has or will be given any authority whatsoever to agree to any variation, cancellation or waiver of these Conditions.

### **2. Provision of Logistics Services**

- 2.1 All services are provided by the Company as agents only, except in the following circumstances where the Company acts as principal:
- (a) where the Company performs any carriage, storage, loading and unloading, processing, packing, distribution and handling of the Goods, but only to the extent that the service is performed by the Company itself or its servants and the Goods are in the actual custody and control of the Company, or
  - (b) where, prior to the commencement of the service of Goods, the Customer in writing demands from the Company particulars of the identity, services or charges of persons instructed by the Company to perform part or all of the service, and the Company fails to give the particulars demanded within 28 days. However, for the purposes of this sub-clause, the Company shall only be deemed to be contracting as a principal in respect of that part of the service which the Company fails to give the particulars demanded, or
  - (c) to the extent that the Company expressly agrees in writing to act as a principal, or
  - (d) to the extent that the Company is held by a court of law to have acted as a principal.
- 2.2 Without prejudice to the generality of clause 2.1
- (a) the charging by the Company of a fixed price for any services whatsoever shall not in itself determine or be evidence that the Company is acting as an agent or a principal in respect of those services.
  - (b) the supplying by the Company of its own or leased equipment shall not in itself determine or be evidence that the Company is acting as 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, sea or air waybill, consignment note (including carriage by internal air, road, railway, waters), warehouse receipt 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 as a Customs Broker in respect of or relating to customs requirements, taxes, licenses, consular documents, certificates of origin, inspection, certificates and other similar services or when obtaining insurances for or on behalf of the Customer or relating to the Goods (other than where by law the Company is deemed to be an agent of the insurer) or when providing any other services whatsoever for or on behalf of the Customer.

2.3 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 clause 21.5, the conditions on any Bill of Lading, Sea or Air Waybill, consignment note (including carriage by internal air, road, railway, waters), and warehouse receipt issued by the Company as Principal).

### 3. Definitions

In these conditions:

- (a) "Company" is Schenker China Ltd.
- (b) "Customer" means any person at whose request or on whose behalf the Company provides a service;
- (c) "Person" includes persons or any body or bodies corporate;
- (d) "Owner" includes 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;
- (e) "Authority" means a duly constituted legal or administrative person, acting within its legal powers and exercising jurisdiction within any nation, state, municipality, port or airport;
- (f) "Goods" includes the cargo and any container not supplied by or on behalf of the Company, in respect of which the Company provides a service;
- (g) "Container" includes any container, flexitank, trailer, transportable tank, flat, pallet or any article of transport used to carry or consolidate goods and any equipment of or connected thereto;
- (h) "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;
- (i) "Hague-Visby-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 as amended by the Visby Protocol of 23rd February 1968 and the SDR Protocol of 21st December 1979;
- (j) "Incidental matters" means 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.
- (k) "Instructions" means a statement of the Customers specific requirements.
- (l) "Logistics Services" means 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, packing, 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 Logistics Services or ancillary to the provision of the Logistics Services.

- (m) "Montreal Convention" means the Convention for the Unification of Certain Rules for International Carriage by Air signed at Montreal in 1999. Convention of 1999.

#### **4. Obligations of Customer**

- 4.1 The Customer warrants that it is either the Owner or the authorized agent of the Owner of the Goods and that it is authorized to accept and accepts these Conditions, not only for itself, but also as agent for and on behalf of the Owner.
- 4.2 The Customer warrants that it has reasonable knowledge of matters affecting the conduct of its business, including, but not limited to, the terms of sale and purchase of the Goods and all other matters relating thereto.
- 4.3 The Customer shall give sufficient and executable instructions.
- 4.4 The Customer warrants that the description and particulars of the Goods are complete and correct.
- 4.5 The Customer warrants that the Goods are properly packed and labeled, except where the Company has accepted instructions in respect of packaging, processing and/or labeling.
- 4.6 Before presentation of the Goods for warehousing, the Customer shall inform the Company in writing of any special precautions necessitated by the nature, weight or condition of the Goods and any statutory duties specific to the Goods, with which the Company may need to comply.

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

- 5.1 Unless agreed in writing, the Customer shall not deliver to the Company, or cause the Company to deal with or handle, Dangerous Goods.
- 5.2 If the Customer is in breach of Clause 5.1:
- (a) the Customer shall be liable for all loss or damage whatsoever caused by or to or in connection with the Goods howsoever arising;
  - (b) the Customer shall defend, indemnify and hold harmless the Company against all penalties, claims, damages, costs and expenses whatsoever arising in connection therewith; and
  - (c) the Company (or any other person in whose custody the Goods may be in at the relevant time) may, at the Company's sole discretion, have the Goods destroyed or otherwise dealt with. For the purposes of this sub-clause, notice is not required to be given to any person of the intention to destroy or otherwise deal with the Goods.
- 5.3 If the Company agrees to accept Dangerous Goods and then it (or any other person) reasonably forms the view that those Goods constitute a risk to other goods, property, life or health, it shall notify and urge the Customer or Owner to make necessary disposal. In case of emergency, at the expense of the Customer or Owner, the Company may make the necessary disposal, but shall inform the Customer or Owner of the case promptly afterwards.

- 5.4 The Customer undertakes not to tender for transportation or warehousing any Goods which require temperature control without previously giving written notice of their nature and the particular temperature range to be maintained and, in the case of a temperature controlled Container stuffed by or on behalf of the Customer, the Customer further undertakes that:
- (a) the Container has been properly pre-cooled or pre-heated as appropriate;
  - (b) the Goods have been properly stuffed in the Container; and
  - (c) the Container's thermostatic controls have been properly set by the Customer.
- 5.5 If the requirements of Clause 5.4 are not complied with the Company shall not be liable for any loss of or damage to the Goods caused by such non-compliance.
- 5.6 Unless agreed in writing, 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 logistics service or to make any declaration as to specific stowage and storage requirements of any Goods.
- 5.7 Unless 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.
- 5.8 Unless agreed in writing that the Goods shall depart by or arrive by a particular date, the Company accepts no responsibility for departure or arrival dates of Goods.

## **6. Insurance**

- 6.1 No insurance shall be effected except upon express instructions given in writing by the Customer and in effecting any such insurances, the Company shall be deemed to be an agent only of the Customer (other than where by law the Company is deemed to be an agent of the insurer) and not as an insurer, insurance broker or other form of intermediary.
- 6.2 All insurances effected by the Company are effect as agent only for the Customer (other than where by law the Company is deemed to be an agent of the insurer) and all such insurances are subject to the usual exceptions and conditions of the policies of the insurance company or underwriters taking the risk.
- 6.3 Unless agreed in writing, the Company shall not be under any obligation to effect a separate insurance on each consignment but may declare it on any open or general policy.
- 6.4 The Company is an agent only of the Customer in respect of the effecting of insurance (other than where by law the Company is deemed to be an agent of the insurer) and in any event 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 by the Company or paid to the Company by the customer.

## **7. General Indemnities and Liabilities of the Customer and Owner**

- 7.1 The Customer and Owner shall defend, indemnify and hold harmless the Company against all liability, loss, damage, costs and expenses howsoever arising:
- (a) from the nature of the Goods, other than to the extent caused by the Company's negligence,

- (b) out of the Company acting in accordance with the Customer's or Owner's instructions, or
- (c) from a breach of warranty or obligation by the Customer or arising from the negligence of the Customer or Owner, or
- (d) from any violation of applicable law, regulation by the Customer or the personal injuries, damage against property and infringement of third-party intellectual property right by the Customer.

7.2 Except to the extent caused by the Company's negligence, the Customer and Owner shall be liable for and shall defend, indemnify and hold harmless the Company in respect of all duties, taxes, imposts, levies, deposits and outlays whatsoever levied by any Authority and for all payments, fines, costs, expenses, loss and damage whatsoever incurred or sustained by the Company in connection therewith.

7.3 Advice and information, in whatever form it may be given, is provided by the Company for the Customer only and the Customer shall defend, indemnify and hold harmless the Company for all liability, loss, damage, costs and expenses arising out of any other person relying on such advice or information.

7.4 The Customer shall be liable for the loss, damage, contamination, soiling, detention or demurrage before, during and after the service of property of:  
(a) the Company;  
(b) the Company's servants, sub-contractors or agents;  
(c) independent contractors engaged by the Company for performance of part or all of the logistics services;  
(d) any person; or  
(e) 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.

7.5 Instructions to collect payment on delivery in cash or otherwise are accepted by the Company upon and on the condition that the Company in the matter of such collection will be liable for the exercise of reasonable diligence and care only. Unless express written instructions are received that the Goods are not to be delivered without payment, the Company accepts no liability if, upon delivery of the goods, payment is not made.

## **8. Subcontractors**

8.1 The Customer undertakes that no claim will be made against any 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 logistics services. If any such claim should nevertheless be made, the Customer undertakes to indemnify the Company against all consequences thereof.

8.2 Without prejudice to Clause 8.1, every servant, sub-contractor or agent of the Company 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 behalf, but as agent and trustee for such servants, subcontractors and agents.

8.3 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 these Conditions.

- 8.4 Without prejudice to the generality of this Clause 8, the indemnity referred to in Clause 8.3, shall cover all claims, costs and demands arising from or in connection with the negligence of the Company, its servants, sub-contractors and agents.
- 8.5 In this Clause, "sub-contractors" includes direct and indirect sub-contractors and their respective employees, servants and agents.

#### **9. Charges etc.**

- 9.1 The Customer shall pay to the Company in cash, or as agreed, all sums immediately when due without deduction or deferment on account of any claim, counterclaim or set-off.
- 9.2 When the Company is instructed to collect freight, duties, charges or other expenses from any person other than the Customer, the Customer:  
(a) shall remain responsible for these amounts; and  
(b) shall pay these amounts to the Company on demand where these amounts have become due and have not been paid by such other person.
- 9.3 On all accounts overdue to the Company, the Company shall be entitled to liquidated damages, such liquidated damages to be calculated at 2 per cent above the base interest rate of the Company's bank applicable during the periods that such amounts are overdue.
- 9.4 The Customer shall be liable for and pay to the Company any additional costs or expenses the Company may incur and for any loss or damage occasioned either directly or indirectly to the Company as a result of the Company relying upon the description particulars and handling methods provided by the Customer or by reason of any illegal, incorrect or insufficient marking, numbering or addressing of the Goods.

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

- 10.1 Unless otherwise agreed in writing, the Company shall be entitled to enter into contracts on behalf of itself or the Customer and without notice to the Customer:  
(a) for the logistics services (whole or part) by any person, means or time limit, or  
(b) for the location and owner of the warehouse, the packing or handling of the Goods or ,  
(c) for the carriage of Goods by any route( transshipment included ), person , means , or  
(d) for the carriage or storage of Goods with other goods of whatever nature,  
(e) for the performance of its own obligations, and to do such acts as the Company reasonably considers may be necessary or incidental to the performance of the Company's obligations.
- 10.2 The Company shall be entitled (without incurring any additional liability), but shall be under no obligation, to depart from the Customer's instructions in any respect if the Company considers there is good reason to do so in the Customer's interest.
- 10.3 The Company may at any time comply with the orders or recommendations given by any Authority. The responsibility and liability 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.
- 10.4 The Company shall be entitled (but under no obligation) at any time and from time to time to inspect the Goods by proper means.

- 10.5 If at any time the Company reasonably considers that the logistics services should not be undertaken or continued or only continued after effecting any necessary incidental matters or incurring additional expense or risk, the Company shall be entitled to:
- (a) abandon the logistics services or to effect such additional incidental matters and incur such additional expense, as may be reasonably necessary in order to enable the logistics services to be effected or further effected; and
  - (b) be reimbursed by the Customer for the cost of all such additional incidental matters and all such additional expense incurred.
- 10.6 If the Company (or any person whose services the Company makes use of) considers:
- (a) the performance of the Company's obligations are likely to be: (i) affected by any hindrance, risk, delay, difficulty or disadvantage whatsoever, or (ii) prohibited under any laws or regulations, including but not limited to European Union laws, US laws or other national laws relating to anti-terrorism and trade embargos; and
  - (b) the hindrance, risk, delay, difficulty, disadvantage or prohibition cannot be foreseen, avoided and surmounted by reasonable endeavors of the Company or such other person,
- the Company may (upon giving notice in writing to the Customer or Owner), at its sole discretion, treat the performance of its obligations as terminated and may, at the Customer's expense, place the Goods or any part of them at the Customer's or Owner's disposal at any place which the Company deems safe and convenient.
- 10.7 The notice in writing referred to in Clause 10.6 is not required where it is not reasonably possible to give such notice.
- 10.8 Where the Company exercises its rights and obligations under Clause 10.6, responsibility and liability of the Company in respect of the logistics services shall thereupon cease absolutely.
- 10.9 Where the Company (or any person whose services the Company makes use of) is entitled to call upon the Customer or Owner to take delivery of the Goods at a designated time and place and delivery of the Goods, or any part thereof, is not taken by the Customer or Owner at the designated time and place the Company (or such other person) shall be entitled to urge the Customer or Owner to claim the goods within a reasonable time period. After this additional time period expires, the Company may have the goods deposited.
- 10.10 Notwithstanding Clauses 10.6 to 10.9, the Company shall be entitled (but under no obligation) without any responsibility or liability to the Customer and Owner, to sell or dispose of
- (a) all Goods which the Company considers cannot be delivered as instructed, but only upon giving 21 days notice in writing to the Customer, and
  - (b) with notice afterwards, 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) loss or damage to any person or property or to contravene applicable regulations.
- 10.11 Where the Company sells or disposes of Goods pursuant to Clause 10.10 the Customer shall be responsible for any costs and expenses of the sale or disposal.
- 10.12 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 without notice to the Customer.
- 10.13. 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.

## **11. Lien**

- 11.1 The Company shall have a particular and general lien on all Goods or documents relating to Goods in its possession, or the property of the Customer or Owner for all sums due at any time from the Customer or Owner (whether those sums are due from the Customer on those Goods or documents or on any other Goods or documents).
- 11.2 Where any sum due to the Company from the Customer or Owner remains unpaid, the Company, on giving two months notice in writing to the Customer, shall be entitled (without liability to the Customer and Owner) to sell or dispose of such Goods or documents by public auction or by private agreement with the Customer or Owner at the risk and expense of the Customer and Owner and to apply the proceeds of any such sale or disposal in or towards the payment of the sums due.

## **12. Containers**

- 12.1 If a Container has not been packed or stuffed by the Company, the Company shall not be liable for loss of or damage to the contents if caused by:
- (a) the manner in which the Container has been packed or stuffed,
  - (b) the unsuitability of the contents for carriage in Containers, unless the Company has approved the suitability,
  - (c) 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 (c) shall only apply if the unsuitability or defective condition arose:
    - (i) without any negligence on the part of the Company; or
    - (ii) would have been apparent upon reasonable inspection by the Customer or Owner or person acting on behalf of either of them.
  - (d) the fact that the Container is not sealed at the commencement of the Carriage, except where the Company has agreed to seal the Container.
- 12.2 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 referred to in Clause 12.1, except for Clause 12.1(c)(i).
- 12.3 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.

## **13. General Liability**

- 13.1 Except where otherwise provided in these Conditions, the Company shall not be liable for any loss or damage whatsoever arising from:
- (a) the act or omission of the Customer or Owner or any person acting on their behalf,
  - (b) compliance with the instructions given to the Company by the Customer, Owner or any other person entitled to give them,
  - (c) insufficiency of the packing or labeling of the Goods, except where such service has been provided by the Company,
  - (d) handling, loading, stowage or unloading of the Goods by the Customer or Owner or any person acting on their behalf,
  - (e) inherent vice of the Goods,
  - (f) riots, civil commotions, strikes, lockouts, stoppage or restraint of labour from whatsoever cause,



- (g) fire, flood, storm, explosion or theft or
- (h) any cause which the Company could not foresee, avoid and surmount, and the consequences whereof it could not prevent by the exercise of reasonable diligence.

13.2 Subject to Clause 5.8, the Company shall not be liable in contract or in tort or otherwise for loss, damage or cost howsoever caused (whether or not indirect or consequential) to property other than the Goods themselves and shall not be liable for any pure economic loss, consequential loss, punitive damages or loss of profit or market, delay or deviation howsoever arising.

13.3 Where the loss or damage of 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.

#### **14. Amount of Compensation**

14.1 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 Clause 14.4 whichever is the lesser of:

(i) the value of, or

(ii) the limit of liability provided in competent law, if available, or the equivalent of 2 SDR per gross kilogram in the currency of the loss or damage, (the exchange rate to apply being the rate as at the date of the delivery of the Goods) of,

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.

14.2 The limitation of liability referred to in Clause 14.1 shall apply notwithstanding that the cause of the loss or damage is unexplained.

14.3 If agreed in writing prior to receipt of the Goods, the Company may accept liability in excess of the limits set out in these Conditions upon the Customer agreeing to pay the Company's additional charges for accepting such increased liability. Details of the Company's additional charges will be provided upon request.

14.4 Compensation shall be calculated by reference to the invoice value of the Goods plus freight and insurance if paid.

14.5 If there be no invoice value for the Goods, the compensation shall be calculated by reference to the value of such Goods at the place and time when they were 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 be no commodity exchange price or current market price, by reference to the normal value of goods of the same kind and quality.

14.6 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. Should any Customer nevertheless delivery any such Goods to the Company or cause the Company to handle or deal with any such Goods other than in accordance with prior written

agreement, the Company shall be under no liability whatsoever for or in connection with such Goods howsoever arising.

## **15. Notice of Loss, Timebar**

15.1 The Company shall be discharged of all liability unless:

- (a) notice of any claim is received by the Company or its agent in writing within 14 days after the date specified in Clause 15.2, or within a reasonable time after that date if the Customer proves that it was impossible to so notify, and
- (b) suit with regard to the carriage of goods by sea is brought in the proper forum within one year and written notice thereof received by the Company after the date specified in Clause 15.2.

15.2 For the purposes of Clause 15.1, the applicable dates are:

- (a) in the case of loss or damage to Goods, the date of delivery of the Goods,
- (b) in the case of delay or non-delivery of the Goods, the date that the Goods should have been delivered,
- (c) in any other case, the event giving rise to the claim.

## **16. General Average**

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

## **17. Miscellaneous**

### **17.1 Notice**

Any notice served by post shall be deemed to have been given on the seventh day following the day on which it was posted to the address last known to the Company to be the address of the recipient of the notice.

### **17.2 Defenses and Limits of Liability**

The defenses and limits of liability provided in these Conditions shall apply in any action against the Company whether founded in contract or in tort or howsoever otherwise founded.

### **17.3 Legislation**

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 is held to be repugnant to such legislation to any extent such part shall as regards such business be over-ridden to that extent and no further.

### **17.4 Headings**

Headings of clauses or groups of clauses in these Conditions are for indicative purposes only.

## **18. Governing 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 the law of the People's Republic of China in which the Company has its principal place of business and any such claim or dispute shall be determined by the Courts of the People's Republic of China and no other Court.

## **PART II: Company As Agent**

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

19.1 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, loading and unloading, processing, packing, distribution and handling of 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 third parties referred to in Clause 19.1.

19.3 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 acts which bind the Customer in all respects notwithstanding any departure from the Customer's 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, loss, damage, costs or expenses arising out of any contracts made in the procurement of the Customer's requirements in accordance with Clause 19.1.

### **20. Choice of Rates**

20.1 Where there is a choice of rates according to the extent or degree of liability assumed by persons carrying, storing, or handling the Goods, no declaration of value (where available) will be made by the Company unless previously agreed in writing between the Customer and the Company.

## **PART III: Company as Principal**

### **21 Special Liability Conditions**

21.1 Where the Company contracts as principal for the performance of the Customer's instructions, the Company undertakes to perform, or in its own name to procure, the performance of the Customer's instructions and, subject to the provisions of these Conditions, shall 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:

- (a) the Company contracts as a principal and sub-contracts the performance of the Company's services; and
  - (b) 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 the 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 shall not exceed the amount recovered, if any, by the Company from the sub-contractor.

21.3 Notwithstanding other provisions in these Conditions, if it can be proved where the loss of or damage to the Goods occurred, the Company's liability shall be determined by the provisions contained in any international convention or national law, the provisions of which:

- (a) cannot be departed from by private contract, to the detriment of the claimant, and
- (b) 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 other provisions in these Conditions, if it can be proved that the loss of or damage to the Goods occurred at sea or on inland waterways and the provisions of Clause 21.2 do not apply, the Company's liability shall be determined by the Hague-Visby Rules. Reference in the Hague-Visby Rules to 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 Clauses 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 as Principal, the conditions of any such documents shall prevail to the extent of such inconsistency but no further.

## **22 Both-to-Blame Collision Clause**

22.1. The Both-to-Blame Collision Clause as recommended by BIMCO as at the same of the provision of Services is incorporated into and forms part of these Conditions.

## **23. USA and/or Canada and Additional Responsibility Clause**

23.1 With respect to transportation within the USA or Canada, the responsibility of the Company shall be to procure transportation by carriers (one or more) and such transportation shall be subject to such carrier's contracts and tariffs and any law compulsorily applicable. The Company guarantees the fulfillment of such carrier's obligations under their contracts and tariffs.

23.2 If and to the extent that the provisions of the Harter Act of the USA 1893 would otherwise be compulsorily applicable to regulate the Company's responsibility for the Goods during any period prior to loading on or after discharge from the vessel on which the Goods are to be or have been carried, the Company's responsibility shall instead be determined by these Conditions. If such provisions are found to be invalid such responsibility shall be determined by the provisions in the Carriage of Goods by Sea Act of the USA Approved 1936.

23.3 If the Hamburg Rules should be held to be compulsorily applicable to any carriage of goods by sea undertaken by the Company as principal, these Conditions shall be read subject to the provisions of the Hamburg Rules and any term of these Conditions that is repugnant to the Hamburg Rules shall be void to the extent of such repugnancy but no further.

#### **24. Air Carriage**

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

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

24.2 Notwithstanding any other provision of these Conditions, where the Company acts as a principal in respect of a 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.

# 标准服务条款

## 一 一般条款

### 1 适用

1.1 在遵守本条款1.2条情况下，所有本公司物流服务不论是否收费均只适用本条款，并且

- (a) 第一部分条款适用于全部本公司物流服务行为。
- (b) 第二部分条款只适用于本公司以代理人身份提供的物流服务行为。
- (c) 第三部分条款只适用于本公司以本人身份提供的物流服务行为。

1.2 规定本公司为物流服务提供者签约并由本公司或本公司代表签署的显示名称为“提单”（无论是否可以转让）、海运单、空运单、运单（包括国内航空、公路、铁路、沿海、内河运输）、仓单或包含上述文字的单证，如果上述单证中的规定与本条款不相一致，就不相一致部分上述单证中的规定优先。

1.3 对本条款（或其部分条款）的任何变更、取消或者放弃，必须由本公司董事书面签署。没有其他任何人已经或将被赋予任何权利对本条款进行变更、取消或者放弃。

### 2 物流服务

2.1 本公司以代理人身份提供所有服务，但以下情况本公司身份为本人：

- (a) 本公司进行货物的运输、仓储、装卸、加工、包装、配送等业务，但仅限于本公司或其受雇人提供物流服务且货物在本公司的实际保管和控制之情况，或者
- (b) 在物流服务开始前，客户以书面要求本公司提供本公司本次物流服务（全部或部分）指定人员的身份、服务内容、收费的明细情况，本公司未能在28天内予以答复。故根据本款，本公司将被认作以本人身份就未能予以答复的有关明细部分提供物流服务，或者
- (c) 本公司以书面方式明确表示以本人身份行事，或者
- (d) 本公司被法庭判定以本人身份行事。

2.2 与本条款2.1条情况相一致，

- (a) 本公司对某些服务项目的固定收费这一事实本身并不决定本公司就此服务是以代理人或本人身份行事，或作为判定的依据。
- (b) 本公司为货物的运输、仓储、装卸、加工、包装、配送及其他物流服务提供自有或租赁设备这一事实本身并不决定本公司就此服务是以代理人或本人身份行事，或作为判定的依据。
- (c) 如果本公司获得的提单、海运单、空运单、运单（包括国内航空、公路、铁路、沿海、内河运输）、仓单或其他单证证明承运合同是由客户或货物所有人与非本公司的其他方签署，则本公司以代理人身份行事。
- (d) 本公司在提供以下服务时都以代理人而非本人身份行事，包括以客户代理人身份处理有关海关、税务、许可证、领事文件、原产地证明、商检、证书等事项的服务，为客户或货物进行保险（不包括依据法律认定本公司为保险公司代理人情况）以及其他代表客户的服务事项。

2.3 本公司非公共服务提供者，有权自由酌定是否提供物流服务而不因此承担任何责任。所有服务的提供均只适用本条款（在适用并依据本条款21.5条情况下，适用本公司以本人身份签发的提单、空运单、运单（包括国内航空、公路、铁路、沿海、内河运输）、仓单条款）。

### 3 定义

本条款中：

- (a) “本公司”指 全球国际货运代理（中国）有限公司；
- (b) “客户”指某“人”，本公司基于其要求或者代表其提供服务；
- (c) “人”包括自然人，团体和法人；
- (d) “所有者”指货物的所有权人、托运人、存货人和收货人以及其他对货物有利益关系或可成为有利益关系的人，以及代表他们行事的人；
- (e) “权力机关”是指一依法成立的法律或行政机构，在其法律权限内行使权力，在其具有管辖权的国、省、市、码头或机场范围内行使职能；
- (f) “货物”是指与本公司提供服务相对应的物件以及不由本公司或本公司代表提供的集装箱；
- (g) “集装箱”是指包括集装箱、集装箱液袋、拖车、可移动罐、框架箱、托盘以及其他用于搬运和紧固的运输器具和相关设备；
- (h) “危险货物”是指具有或可变为危险性的、易燃的、放射性的、破坏性的货物，以及可能滋生寄生虫或其有害物的货物；
- (i) “海牙—维斯比规则”是指1924年8月25日在布鲁塞尔签署的《关于统一提单的某些法律规定的国际公约》及其1968年2月23日修订的《维斯比议定书》和1979年12月21日的《特别提款权议定书》；
- (j) “附带事项”是指与物流服务或辅助服务有关的各种已做或将做的事项，包括但不限于在仓库、终点站、场地、码头或其他区域移动、储存、放置、加工、包装货物，从车辆、船舶或其他运输工具装运、下载货物，积载或包扎货物，或者蒸熏、转船、查验以及其处理货物或与货物有关的行为；
- (k) “指示”是指客户就特定要求所作的陈述；
- (l) “物流服务”是指本公司向客户提供的所有服务，包括但不限于国际货物运输代理业务、国内货运代理业务、道路普通货物的运输、仓储、装卸、加工、包装、配送、利用计算机网络管理与运作物流业务等，以及与物流服务提供必然相关或辅助提供服务的一切事项；
- (m) 《蒙特利尔公约》是指1999年在加拿大蒙特利尔签订的《统一国际航空运输某些规则的公约》。

### 4 客户的义务

4.1 客户保证其是货物的所有人或货物所有人的授权代理人，有权接受本条款，并且保证其本人或其代表货物所有人同意接受本条款。

4.2 客户保证其对影响交易履行的事项具有合理的认知，包括但不限于货物的购销条款和其他相关事宜。

4.3 客户应提出充分和可操作的指示。

4.4 客户保证货物的描述和明细是完整和准确的。

4.5 客户保证货物已被妥善的包装和标注，但本公司收到的有关加工、包装和标识指示的情况除外。

4.6 在货物被送交仓储前，客户应就货物的性质、重量、状况而需采取的特殊防范措施以及仓储方就此货物所需遵循的法定义务以书面方式通知本公司。

## 5 特别指示，货物和服务

5.1 除非书面约定，客户不得向本公司提交，或使本公司处理或操作危险货物。

5.2 如果客户违反本条款5.1条：

- (a) 客户应当对所有由于货物引起的或与货物相关联的损害承担赔偿责任；
- (b) 对与之相关而引起的所有对本公司的处罚、诉讼、损害、花费和支出，客户应当进行抗辩、赔偿并使本公司不受损害；
- (c) 本公司（或在相应时间内保管货物的其他方）可以基于自身判断，将货物销毁或采取其他处理措施，依据本条款，将货物销毁或采取其他处理措施无需向其他方进行通知。

5.3 如果本公司同意接受危险货物并且其后本公司（或其他方）合理地认为危险货物对其他的货物、财产、生命和健康构成危险，本公司应催告客户或所有人做出必要的处置；如果情况紧急，本公司可以做出必要的处置，但事后应当将情况及时通知所有人。上述费用由客户或所有人承担。

5.4 客户承诺，除非事先就货物性质及保温范围进行书面通知，客户不对货物运输、仓储提出温度控制要求，并且，如果货物由客户或客户代理人装入温控集装箱，客户则进一步承诺如下：

- (a) 集装箱已被妥善地预冷或预热；
- (b) 货物已被妥善装入集装箱内；
- (c) 客户已妥善设置了集装箱内的温度调控。

5.5 如果本条款5.4条的要求未能得到遵守，由此而引起的对货物的所有损害，本公司将不承担任何责任。

5.6 除非书面同意，本公司没有义务为了法令、惯例或者合同而就货物的性质或价值进行声明，或者对货物在物流服务过程中的特殊利害或特别的积载、仓储要求进行声明。

5.7 除非书面同意或者本公司签署的文件条款中另有规定，凭付款或特定单据移交货物或交付货物的指示必须以书面形式，且本公司的责任不超过其就错交货物应付责任的规定。

5.8 除非书面同意货物应在特定日期出运或到达，本公司对出运或到达日期不承担责任。

## 6 保险

6.1 保险生效基于客户出具的明确的书面指示。就保险生效而言，本公司仅应被认为是客户的代理人（不包括依据法律认定本公司为保险公司代理人情况），而非保险人、保险经纪人或其他中间人。

6.2 所有通过本公司生效的保险，本公司仅为客户的代理人（不包括依据法律认定本公司为保险公司代理人情况），且该保险遵守承保的保险公司或保险人的通常例外条款和条件。



6.3 除非书面约定，本公司没有义务就每一批货物进行单独保险，但可将其归入开口保险单或总保单。

6.4 就保险生效而言，本公司仅是客户的代理人（不包括依据法律认定本公司为保险公司代理人情况），如果保险公司就其责任发生争议，被保险人仅有权向保险人追索，本公司对此不承担任何责任和义务，尽管其保单保费可能与就本次保险由本公司收取的或客户付给本公司的费用不相一致。

## 7 客户和所有人的一般赔偿责任

7.1 对于以下原因引起的所有对本公司的处罚、诉讼、损害、花费和支出，客户应当进行抗辩、赔偿并使本公司不受损害：

- (a) 由于货物的性质，且非由于本公司的过失而引起，
- (b) 由于本公司依照客户或所有人指示的行为，或者
- (c) 由于客户违反保证和义务或者由于客户或所有人的过失，或者
- (d) 由于客户违反现行法律、侵害第三方的人身、财产、知识产权的行为。

7.2 除非由于本公司过失所致，客户和所有人应对由其发生并由本公司承担的费用承担支付义务并进行抗辩、赔偿使本公司不受损害，费用包括所有由权力机关征收的关税、赋税、罚款、定金、付费，以及所有的支出、罚金、价款、损失和损害。

7.3 无论其是以何种方式，本公司仅为客户提供意见与信息，对由依赖于上述意见与信息的其他方而产生的所有义务、损失、损害、费用和支出，客户应进行抗辩、赔偿并使本公司不受损害。

7.4 对在物流服务过程中由客户或所有人或其代理人造成的，以下各方人身伤害、财产的灭失、毁损、污染、肮脏、扣留和逾期，客户应承担赔偿责任：

- (a) 本公司；
- (b) 本公司的受雇人、分包合同人或代理人；
- (c) 本公司安排履行部分或全部服务的独立合同方；
- (d) 其他方；或者
- (e) 其他船舶、车辆、货物的所有人。

7.5 本公司接受在交付货物时以现金或其他方式收取货款的指示，其前提是本公司收取货款时仅承担合理的谨慎和注意义务。除非本公司收到“货款不付不予交货”的明确书面指示，本公司对货物交付时未支付货款的情况不承担责任。

## 8 分包合同人

8.1 客户承诺不会就与物流服务有关的事项向本公司的受雇人、分包合同人或代理人提出诉讼而使其承担责任。如果上述诉请仍然发生，客户承诺赔偿本公司由此产生的一切后果。

8.2 与本条款8.1条相一致，本公司的每一个受雇人、分包合同人或代理人享有所有本条款规定的利益，如同上述条款明确为其利益而订立。本公司不仅代表其自身，亦作为本公司受雇人、分包合同人或代理人的代理人或受托人，订立上述条款。

8.3 基于任何原因和任何人而引起的对本公司的诉请、费用和要求，如果超过了本条款下对本公司责任承担的约定，客户应进行抗辩、赔偿并使本公司不受损害。

8.4 与本条款8条的主旨相一致，本条款8.3条所指赔偿亦包括由本公司、受雇人、分包合同人或代理人的过失所引起或所关联的诉请、费用和要求。

8.5 在本条中，“分包合同人”包括直接或间接分包合同人及其各自的员工、受雇人和代理人。

## 9 收费

9.1 客户应以现金或其他约定方式立即向本公司支付所有到期款项，不得以索赔、反诉或抵销为理由扣减或迟延付款。

9.2 如果客户指示本公司向其他方收取运费、关税、费用或其他支出，客户应当：

(a) 继续对上述款项承担责任；

(b) 如果上述款项已到期且其他方未能支付，则应本公司要求支付上述款项。

9.3 所有对本公司的逾期付款，本公司有权收取违约赔偿金，其金额以逾期期间本公司适用银行基本利率增加2个百分点计算。

9.4 由于客户提供的货物描述、货物明细和操作方法的原因或由于货物不合法、不正确及不完整的标识、数量、地址的原因，本公司因此的额外支出和费用以及直接或间接遭受的损失和损害，客户应承担相应责任予以偿付。

## 10 本公司的权利

10.1 除非另有书面约定，本公司就以下事项有权以自己名义订立合同或在不通知客户的情况下代表客户订立合同：

(a) 物流服务(全部或部分)的具体提供人、提供方式和时限；

(b) 仓库的位置、所有人，货物的包装和操作；

(c) 运输货物的线路（包括转船）、承运人、具体方式；

(d) 货物的运输和存贮或与其他各种性质货物的共存；

(e) 为履行其义务，本公司合理认为必须或附带的事项。

10.2 如果本公司有充分理由认为是为了客户的利益，本公司有权（不产生额外责任），但没有义务，偏离客户的指示而相机行事。

10.3 本公司在任何时候皆遵循权力机关的命令或劝告。货物根据权力机关的命令或劝告被交付或处置后，本公司就此货物的义务与责任亦因此终止。

10.4 本公司有权（但没有义务）在任何时候或不时以适当方式检查货物。

10.5 如果本公司有理由认为不应提供物流服务，或不应继续提供物流服务，或应在某些必要附带事项成就时继续提供物流服务，或引起了另外的费用和 risk，在任何时候本公司有权：

(a) 停止提供物流服务，或使必要附带事项成就，或为了完成或将来完成物流服务而发生合理必要的额外支出；并

(b) 由客户为上述必要附带事项成就而支付费用和额外支出。

10.6 如果本公司（或本公司利用其服务的其他方）认为：

（a） 本公司义务的履行将受到: (i)各种障碍、危险、迟延、困难或不利的的影响, 或 (ii)任何法律或法规, 包括但不限于欧盟、美国或其他国家有关反恐和贸易禁运的法律或法规, 的禁止; 并且

（b） 上述的障碍、危险、迟延、困难、不利或禁止是本公司或其他方不能预见、不能避免并不能以合理努力克服的,

本公司可以自行决定（经书面形式通知客户或所有人）终止义务的履行, 并将货物全部或其部分在本公司认为安全和方便的任何地方交由客户或所有人处置, 费用由客户承担。

10.7 如果没有合理可能性递交本条款10.6条所指的书面通知, 该书面通知可以不作要求。

10.8 如果本公司行使本条款10.6条的约定, 本公司就此项物流服务的义务和责任因此完全终止。

10.9如果本公司（或本公司利用其服务的其他方）有权要求客户或所有人在指定时间地点移交货物或提取仓储物, 但客户和所有人未能在指定时间地点接受或提取全部或部分货物, 本公司（或上述其他方）可以催告其在合理期限内提取, 逾期不提取的, 本公司可以提存该货物。

10.10 尽管如本条款10.6至10.9所规定, 本公司仍有权（但没有义务）且不向客户和所有人承担任何的责任和义务, 出售或处理

（a） 本公司认为无法依照客户指示交付的货物, 但应在给予客户书面通知21天后; 及

（b） 已经腐烂、变坏、变质的货物, 或者将要腐烂、变坏、变质并引起（或有理由预期将引起）对其他人或财产的损失或损害的货物, 或者与现行的法律法规相违背的货物, 但需事后通知客户。

10.11 如果本公司根据本条款10.10条出售或处理货物, 客户应承担出售或处理过程中的全部支出和费用。

10.12 本公司有权保留和收取通常由货运代理人的保留和收取的经纪费、佣金、补助和其他报酬, 并无须通知客户。

10.13 本公司有权就客户在本条款下的责任向客户或所有人提出单独或连带的追索, 或就客户被要求支付而未支付的款项提出单独或连带的追讨。

## 11 留置权

11.1 对于客户或所有人的到期债务, 本公司可以以其所占有的客户或所有人的货物或货物相关单证设立个别或一般留置权, 且无论该到期债务是否由于客户和所有人被留置的货物或单证所产生。

11.2 如果客户或所有人未能向本公司支付到期债务, 本公司在给予客户两个月书面通知后, 有权（且对客户和所有人不承担责任）以公开拍卖或与客户或所有人私下协议方式出售或处置上述货物或单证, 处理的风险和费用由客户和所有人承担, 处理的收入用于偿付到期债务。

## 12 集装箱

12.1 如果集装箱不是由本公司捆扎或装箱, 由于以下原因引起箱内货物的损失或损害, 本公司不承担责任:

- (a) 捆扎或装箱方法;
- (b) 箱内货物不适合集装箱运输, 除非本公司已表示同意;
- (c) 集装箱不合适或有缺陷, 如果集装箱由本公司或本公司代表提供, 则本条仅在集装箱不合适或有缺陷情况但具有以下原因时适用:
  - (i) 对此本公司不存在任何过失;
  - (ii) 客户或所有人或他们的代表本可以通过合理检查发现。
- (d) 集装箱在开始运输时没有封箱, 除非本公司已同意封箱。

12.2 除本条款12.1(c)(i)条外, 就本条款12.1条中的一个或多个事项而引起的责任、损失、损害、费用和支出, 客户应进行抗辩、赔偿并使本公司不受损害。

12.3 如果本公司被指示提供集装箱, 没有相反的书面要求, 本公司没有义务提供特定型号和质量的集装箱。

### 13 一般责任

13.1 除非在本条款另有约定, 本公司对由以下各种原因引起的任何损失或损害不承担责任:

- (a) 客户或所有人或他(们)的代表的行为或过失;
- (b) 遵循客户、所有人或其他有权做出指示的人给予本公司的指示;
- (c) 对货物不捆扎或标注不充分, 除非上述服务是由本公司提供;
- (d) 由客户或所有人或他(们)的代表进行的操作、装载、储存或卸载;
- (e) 货物的内在缺陷;
- (f) 火灾, 水灾, 暴风雨, 爆炸或盗窃;
- (g) 暴乱, 骚乱, 罢工, 停业, 各种原因引起的劳力断缺或限制;
- (h) 本公司的合理勤勉努力所不能预见, 不能避免且不能克服的原因。

13.2 遵守本条款5.8条, 本公司对各种原因引起的(无论是间接的或是从属的)除货物本身以外其他财产的损失、损害和费用不承担责任, 也不对各种原因引起的间接损失、处罚损失、抽象经济损失或利润损失或市场损失, 迟延或偏差承担责任。

13.3 多式联运作为物流服务的一部分, 如果货物的灭失、毁损确定发生于多式联运的某一运输区段的, 本公司的赔偿责任和责任限额适用调整该区段运输方式的有关法律规定。货物灭失、毁损发生的运输区段不能确定的, 赔偿责任限额适用各种运输方式中责任限额最低的一种。

### 14 赔偿金额

14.1 除非本条款中另有约定, 由于各种原因引起的本公司责任承担不超过以下数额:

- (a) 除本条款14.4条外, 所有毁损、灭失、错交、误交或者索赔货物的索赔数额以下述之低者:
  - (i) 货物价值, 或者
  - (ii) 适用法律所规定的责任限额, 如无, 则毁损、灭失货物以每公斤2个特别提款权计算(汇率为货物交付时的汇率)。

(b) 就本条款未排除的迟延情况提出索赔, 其数额为本公司就此迟延货物所收取的费用。

14.2 本条款14.1条所指的责任限制同样适用于未明原因所造成的损失或损害。

14.3 如果在收取货物前书面达成一致, 客户同意向本公司支付附加收费以提高本公司的责任限

额，本公司可以接受比本条款规定更高的责任限额。具体附加收费明细将应要求而提供。

**14.4 赔偿将依据货物的发票金额加上已付的运费和保险费计算。**

14.5 如果货物没有发票金额，赔偿将依据货物交至或应当交至客户或所有人的时间地点计算此货物的价值。货物的价值应根据现时市场价格确定，或者在没有商品交易市场价格或现时市场价格的情况下，依据同类同质量货物的通常价格确定。

14.6 除非在收取货物前书面同意，本公司不接受或处理贵金属、钱币，宝石、珠宝、古玩、工艺品或其他贵重货物。如果在本公司未事先书面同意的情况下客户仍然向本公司交付上述货物或使本公司操作或处理上述货物，本公司对与上述货物有关的各种情况不承担任何责任。

## **15 损失通知，时限**

15.1 本公司免除所有责任，除非：

- (a) 本公司或其代理人在本条款15.2条确定日期后的14天内收到书面索赔通知，如果客户证明其不能按期通知，则在该确定日期后的合理时间内；
- (b) 涉及海上货物运输的在15.2条确定日期后的一年内在适当的法庭提起诉讼并且本公司收到诉讼的书面通知。

15.2 为本条款15.1条确定的日期为：

- (a) 如果货物灭失或毁损，确定的日期为货物交付日；
- (b) 如果货物迟延或未交付，确定的日期为货物应当交付日；
- (c) 其他情况为引起索赔事件发生日。

## **16 共同海损**

16.1 客户应当就有关海损的主张进行抗辩、赔偿并使本公司不受损害，并就要求本公司提供共同海损担保的主张和需求，客户应当应本公司要求就此立即提供上述担保。

## **17 其他**

### **17.1 通知**

所有通过邮局寄出的信件应被认为在寄出后的第七天已交于对方，寄出的地址为本公司最近知晓的通知接受方地址。

### **17.2 抗辩与责任限制**

本条款中所有的抗辩和责任限制适用于任何针对本公司的诉讼，无论其是基于合同、侵权或其他。

### **17.3 法律**

如果某些法律规定强制适用于特定商业行为，本条款中与此特定商业行为有关部分应遵循该法律规定，但不表示在此法律下本公司放弃了本条款中的权利、豁免或者增加了本公司的义务、责任；如果本条款的部分约定被认定与该法律存在一定程度的冲突，则仅此与特定商业行为有关的冲突部分不予适用。

### **17.4 标题**

本条款中条文或条文组的标题仅出于指示目的。

## **18 法律适用**

18.1 本条款以及由于本公司服务所引起的或相关的请求和争议应当适用中华人民共和国法律并由中华人民共和国法院对请求和争议做出判决。中华人民共和国为本公司的注册地。

## **二 本公司为代理人**

### **19 特别义务和赔偿条款**

19.1 本公司作为代理人身份行事，本公司不与客户就货物的运输、仓储、装卸、加工、包装、配送等业务以及与之相关的其他具体服务订立或意图订立合同，只是代表客户为获取以上服务而与第三方签订合同，所以直接的合同关系是在客户和上述第三方之间建立。

19.2 本公司不为本条款19.1条所指的第三方的行为和过失承担责任。

19.3 当本公司以代理人身份行事，本公司具有客户授权代表客户签订合同，且本公司代理行为对客户在各方面均具有约束力，不管是否有偏离客户指示。

19.4 除非由于本公司过失所造成，客户对所有的责任、损失、损害、费用或支出应进行抗辩、赔偿并使本公司不受损害，如果上述情况是由于为满足客户要求而根据本条款19.1条所订立的合同引起的。

### **20 费率的选择**

20.1 如果存在根据运输、存贮、操作方所承担责任的程度选择费率的情况，除非事先由客户和本公司书面约定，即使可能，本公司亦无须就价格做出声明。

## **三 本公司为本人**

### **21 特别义务条款**

21.1 如果本公司为客户指示的实现以本人身份订立合同，本公司承担实现客户指示或以自身名义获取客户指示实现的义务，并且，根据本条款的约定，本公司应对自接受掌管货物至交付货物期间发生的货物灭失或毁损承担责任。

#### **21.2 如果**

- (a) 本公司以本人身份订立合同并就本公司服务义务的履行订立分合同；并
- (b) 可以证明对货物的灭失或毁损是在货物由分包合同人保管期间引起或导致；

本公司全部享有在本公司与分包合同人的分包合同中，以及在法律、法规、条例中，分包合同人所享有的权利、责任限制和责任免除，本公司所承担的责任不超过其从分包合同人处获得赔偿的数额。

21.3 尽管有本条款其他条文之规定，如果可以证明就货物发生的灭失或毁损，本公司的责任应根据有关国际条约或国内法规定予以判定，上述国际条约或国内法之规定：

- (a) 不能由于私合同而被背离以至对权利要求方不利；
- (b) 应予适用，如果权利要求方已经与提供特定服务的服务提供方就引起灭失或毁损的服务内容或者运输阶段签订了独立的直接的合同，并且权利要求方已经获得了在上述服务内容或运输阶段适用国际条约或国内法必须出具的特定单证并作为证据。

21.4 尽管有本条款其他条文之规定，如果有证据证明货物的损失或损害发生于海上或是内河运

输，并且本条款21.2条不予适用，本公司的责任应根据海牙-维斯比规则确定。海牙-维斯比规则有关海运的规定应认为包括对内河运输的规定，并且海牙-维斯比规则因此做相应理解。

21.5 尽管有本条款21.2、21.3及21.4条文之规定，如果有证据证明货物的损失或损害发生于海上或是内河运输，并且所有人，租船人或船长有权在法律上限制其责任并设立海事赔偿责任限制基金，本公司的责任应限制在有限基金就此货物所分配之部分。

21.6 如果在本条款和由本公司作为本人出具或本公司代表出具的提单、空运单、运单（包括国内航空、公路、铁路、沿海、内河运输）、仓单或其他单证条款之间出现不一致的情况，仅就此不一致部分上述单证条款优先。

## **22 船舶互撞条款**

22.1 BIMCO推荐的船舶互撞条款完整一致的并入本条款并成为本条款的一部分。

## **23 美国和/或加拿大及附加责任条款**

23.1 就在美国或加拿大境内的运输，本公司的责任是获得承运人（一个或多个）的运输服务，且该运输行为遵循与承运人的合同、价目表及强制适用的法律。本公司保证在双方合同和价目表约束下运输义务的完成。

23.2 如果本公司对货物装上将要运载货物的船舶之前或从已运载货物的船舶上卸下之后的责任强制适用美国1893年《哈特法》，则本公司责任由本条款确定。如果该法不能适用，则根据《美国1936年海上运输法》确定责任。

23.3如果《汉堡规则》强制适用于本公司作为本人承担的海上货物运输，本条款应遵循《汉堡规则》的规定。如果本条款约定与《汉堡规则》存在一定程度的冲突，则冲突部分不予适用。

## **24 国际空运**

24.1如果本公司以本人身份承担货物的航空运输，告知如下：

若空运涉及最终目的地或停留地在出运国以外的国家，《蒙特利尔公约》可以适用。《蒙特利尔公约》适用并在大多数情况下限制了承运人对货物损失或损害的责任。约定的经停地点(不包括出发地和目的地)是指作为计划经停地点显示在要求线路和承运人时间表上的地点。第一承运人地址是出发地机场。

24.2尽管有本条款其他条文之规定，如果本公司以本人身份承担货物的国际航空运输,本公司就货物的损失或损害的赔偿责任根据《蒙特利尔公约》确定。-