



Shui Xing Ventures Sdn. Bhd. (651985-H)

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GENERAL TERMS & CONDITIONS

Version 1.0 dated 29 January 2015





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SHUI XING VENTURES SDN. BHD.'S GENERAL TERMS AND CONDITIONS

1. GENERAL STATEMENT AND DEFINITION

- (a) These general terms and conditions ("GTC") shall apply to all services ("Services") provided by Shui Xing Ventures Sdn Bhd ("Company"). These GTC shall be deemed incorporated in and form part of any contract, agreement or arrangement ("Agreement") between the Company and any person at whose request or on whose behalf the Company provides any Services (including the party named as shipper, consignor or consignee on the Company's transport documents) ("Customer") so long as the Company has sent or delivered the GTC to the Customer or that the GTC have been drawn to the attention of or made reference to and/or otherwise made available to the Customer, including by internet access, regardless of whether the Customer expressly acknowledges receipt of the GTC.
- (b) Any other terms and conditions or forms used by the Customer will not be applicable to or be deemed incorporated into any Agreement unless the terms and conditions or forms have been accepted in writing and signed by an authorised officer of the Company.
- (c) Where there are operations and activities ancillary to the performance of the Services (including work performed by shipbrokers, stevedores, carriers and insurance agents), these GTC may be supplemented by other conditions customary to the particular trade or stipulated to be applicable by the third party service provider.
- (d) To the extent that the Company acts as an agent, the Company does not make or purport to make any Agreement with the Customer for the carriage, storage or handling of any cargo to which the Services are provided by the Company, including any packaging, pallet and container supplied by the Customer ("Goods") nor for any physical services in relation thereto, and acts solely on behalf of the Customer to secure such services by establishing agreements with third parties so that direct relationships are established between the Company and such third parties. When acting as an agent, the Company has the authority of the Customer to enter into Agreements with third parties on the Customer's behalf and to do such acts so as to bind the Customer to such Agreements (notwithstanding any departure from the Customer's instructions). The Company shall not be liable for the acts or omissions of such third parties. In the event of any conflict between such other conditions and these GTC, it shall be for the Company to decide which provisions it claims the benefit of.
- (e) Notwithstanding anything set forth herein or in any law to the contrary, and to the extent permitted by law, the GTC take precedence over any law.
- (f) If any legislation is compulsorily applicable to any business or Services undertaken by the Company, the GTC will, as regards such business or Services, be read as subject to such legislation and nothing in the GTC will 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 the GTC will to any extent be repugnant to such legislation, such part of the GTC will as regards such business or Services be void to that extent but no further.
- (g) The Company may amend, vary or supplement the GTC at any time and from time to time by giving notice thereof to the Customer. Any such amendment, variation or supplement shall take effect as from the date specified in such notice or in the absence thereof as from the date of such notice. Unless otherwise agreed in writing and signed by an authorised officer of the Company, no agent or employee of the Company has the Company's authority to waive or vary any of the GTC.
- (h) The Company is a member of the Federation of Malaysia Freight Forwarders ("FMFF"). In the event of any conflict between these GTC and current FMFF's General Standard Trading Conditions for its members, it shall be for the Company to decide which provisions it claims the benefit of.



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2. AGREEMENT FORMATION

- (a) An Agreement between the Customer and the Company shall only come into effect on the date of the Company's written acceptance of any order or instruction from the Customer (incorporating these GTC).
- (b) The Customer is required to issue to the Company all orders and instructions regarding the Goods in writing. Verbal or telephone communications or arrangements shall only be binding on the Company if immediately followed by a written confirmation from the Company. The Company has absolute discretion whether or not to accept any order or instruction, and is not obliged to provide any reason for rejecting any order or instruction.
- (c) In entering into any transaction or business with the Company or providing instructions to the Company:
 - (I) the Customer warrants that it is the owner or a duly authorised agent of the owner of the Goods, and has full authority to accept these GTC for itself and for and on behalf of all other persons who are interested in the Goods, and to perform its obligations hereunder. Where the Customer acts as the agent of the owner of the Goods, the Customer also accepts personal liability to the Company (but without prejudice to any rights or remedies of the Company against the owner of the Goods) such that in respect of such transaction or business, the Company is entitled to enforce its rights or remedies against the Customer and the owner of the Goods jointly and severally;
 - (II) the Company is hereby authorised by the Customer to act on behalf of the Customer to select, engage and enter into Agreement (whether in the name of the Customer or otherwise) with any third party for the carriage of Goods by any route or any carrier, and for storage, packing, unpacking, transportation, transshipment, loading, unloading and any other handling of the Goods by any person at any place and to do such other acts for any purpose related to or incidental to the Customer's instructions. The Company is further authorised to depart from the Customer's instructions if in the Company's opinion, such departure is necessary or desirable in the Customer's interest or is otherwise expedient. The Customer expressly agrees to be bound by any act, Agreement done or entered into by the Company pursuant to the aforesaid authorisations; and
 - (III) the Customer agrees and acknowledges that the Company shall be entitled to sub-contract its obligations to perform the services, in whole or in part, on such terms and conditions as the Company deems appropriate, in its sole discretion. Where the storage or other services in respect of the Goods will be sub-contracted to third parties by the Company, the Company reserves the right to appoint such sub-contractor to provide the service on behalf of the Company, and the Customers will bear all risk relating thereto.

3. OWNER OF GOODS, TITLE AND CLAIM OF GOODS

- (a) The Customer expressly warrants that he is the Owner or the authorised agent of the Owner with authority to accept these GTC not only for himself, but also as agent for and on behalf of the Owner and all other Persons who are or may thereafter become interested in the Goods.
- (b) The Customer shall notify the Company of any sale of Goods covered by an Agreement and shall procure an Agreement in writing by any buyer of Goods. Notwithstanding any such Agreement, the Customer remains fully responsible to the Company for performance of the Customer's obligations under an Agreement.
- (c) Without prejudice to clause 3(a) the Company will have the right to enforce the GTC not only against the Customer but also against the sender and/or consignee and/or owner of the Goods to the extent permitted by law.
- (d) All rights of ownership and title over the Goods will be established and verified by the Customer, or between Customer and its client or other third party. It is acknowledged and understood that the Company has no responsibility or liability with respect to any conflicting claims arising out of a dispute contesting rights of ownership or title to the Goods.



4. DOCUMENTS TO BE PROVIDED TO THE COMPANY

- (a) The Customer will ensure that all instructions, information and documents required to be provided to the Company for the receipt and dispatch of the Goods by the Customer are accurate and adequate and are promptly provided to the Company sufficiently in advance of the date by which the Services are to be performed. Verbal communication of instructions or information shall only be considered as provided to the Company if promptly followed by written confirmation from the Company.
- (b) The Customer will be liable for all consequences arising from the provision of inaccurate, obscure and inadequate instructions, information and/or documents; any failure to furnish any instructions, information and/or documents; or any failure to furnish any instructions, information and/or documents in time.
- (c) The Company will not be obliged to furnish a confirmation for the receipt of the Goods in the absence of a requirement to do so set forth in any of the instructions, information and documents referred to in clause 4(a) above, which has been accepted by the Company, as evidenced in or by the Company's provision of such confirmation. Any receipt issued shall not be negotiable or transferrable instrument and shall not be considered as confirming the Goods received by or under the control or possession of the Company.
- (d) The Company is not a common carrier and shall accept no liability as such. The Company may refuse at its sole and absolute discretion to accept any Goods for carriage without assigning any reason. However, once an order or instructions has been accepted by the Company, the Customer may not change or terminate the order or instruction without the Company's prior written consent. If the Customer terminates such order or instruction unilaterally without providing the Company with written notice of at least two (02) working days prior to the date the services are scheduled to be performed, the Company shall be entitled to claim against the Customer for the full sum payable for the order or instructions duly accepted by the Company, and for all losses, expenses, fines, penalties and damages incurred or suffered as a result of such termination.
- (e) The Company shall perform all orders and instructions in such manner as it deems fit and in accordance with these GTC including the right to determine the route and procedures relating to the handling, storage, custody, transportation, release, delivery and/or forwarding of any Goods, or the right to engage the services of a third party to carry out any part of the orders and instructions. If the Company takes the view that it is necessary or desirable in the interests of the Customer to depart from the Customer's order or instruction, the Company shall be at liberty to do so. All costs and expenses reasonably incurred thereby shall be for the Customer's account.
- (f) Unless otherwise agreed upon, or unless prevented by special circumstances, the Company will commence executing accepted instructions for storage or delivery of the Goods, if possible, not later than the next working day after receipt of the necessary documents (including but not limited to bills of lading, delivery orders, official documents) on the understanding that if the necessary instructions and documents for executing orders are received after 1500 hours (Malaysia time) on any working day (between Mondays to Fridays only), the next working day shall count as the day of receipt.
- (g) If the Customer has instructed the Company that the Goods be stored in a specified quantity, or delivered at a specified time/in a certain quantity, or collected at a certain time but the Customer cancels the instructions without giving the Company prior written notice of at least two (02) working days or fails to deliver or collect the Goods:
 - (I) the Customer shall be liable for all costs and expenses incurred by the Company as a result of labour and equipment arranged for execution of the specified order;
 - (II) the Company shall be at liberty to store the Goods at the sole risk and cost of the Customer whereupon the Company's liability in respect of such Goods shall cease; and



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- (III) the Company shall be entitled (but not obliged) to sell or dispose, at the Customer's cost and expense, the Goods which in the sole opinion of the Company (i) cannot be delivered as instructed after expiry of a seven (07) days written notice from the Company to the Customer; or (ii) have perished or are in the immediate prospect of doing so or have caused or may reasonably be expected to cause loss or damage to any person or property; or (iii) contravene applicable laws and regulations.
- (h) Time shall not be the essence of any Agreement in relation to the performance of any Services by the Company under these GTC. The Company shall arrange, at its sole discretion, the rate of speed for delivery of the Services which shall as much as possible commensurate with the Customer's requirements save that the Company shall not be liable for any loss, damage or expense incurred for and on behalf of or by the Customer should the rate of speed at which the Services are delivered is slower than that required by the Customer.

5. ACCURACY OF DESCRIPTION OF THE GOODS AND QUALITY OF THE GOODS

- (a) The Customer warrants and is bound by the accuracy and truth of all descriptions, values and other particulars and/or information furnished to the Company in respect of the Goods for the purposes of customs clearance or any other purposes whatsoever. The Customer will be liable to and shall indemnify the Company and/or any third parties for any injury, loss or damage whatsoever arising from the incorrect and/or misleading and/or incomplete packaging, description, particulars, indication or information in respect of the Goods including inaccuracies or omissions in the leading marks, numbers, quantity, weight, gauge, measurement, properties, contents, nature, origin, quality or value of the Goods as well as for any damage arising from defects in the Goods and/or packing, which have not been notified to the Company before the parties enter into an Agreement.

The description and/or specification and/or particulars of the Goods and/or in respect of the packages as stated on the face of any confirmation and/or documents by the Company, delivery order and/or release instructions will be treated as the description, specifications and/or particulars provided by the Customer. The Company does not, by the issuance of any other confirmation and/or document, agree that such description, specification and/or particulars are correct or accurate, or admit the existence, good order and condition of the Goods described therein, or of the contents of any package or other shipping unit, subject to the explicit provisions of any applicable statute. The Company will be entitled to rely on such particulars as to the contents, measurements, nature, quality, weight, number, serial numbers, marks, value in respect of the Goods being unknown to it, even if the Goods should have been counted, weighed or measured in the presence of any of the Company's agents or servants and even if such agents or servants could have known the contents, weight, measurement, nature, quality or other particulars of the Goods.

- (b) The accurate particulars in respect of the Goods to be provided by the Customer shall include description, content, origin, properties, quality, measurement, quantity and gross weight and all other particulars (including any hazardous properties or substances within the Goods and any special storage or transport or movement requirements due to the nature of the Goods) which if the Company had been aware of, the Company would not or might not have entered into the Agreement or would or might have entered into the Agreement on different terms and conditions.
- (c) The Company will not be considered to be and will not act as an expert in relation to the nature or quality of the Goods and will not be required or obliged to provide any notification to any party whatsoever in relation to the state, nature or quality of the Goods.
- (d) The Company will be under no obligation to ensure that the samples of the Goods are identical with or match the Goods as described by the Customer or that the Goods conform with the description of the Goods provided by the Customer or to make any declaration with respect to the nature, value or purpose of delivery of the Goods.



6. STORAGE OF GOODS

Pending forwarding or delivery, the Goods may be warehoused or otherwise held at the risk of the Customer at any warehouse owned or operated by or on behalf of the Company at any place and the cost therefor shall be for the Customer's account. Unless otherwise agreed upon in writing by the Company, the Company shall be at liberty to decide how and where the Goods are to be stored and shall at any time be entitled to transfer the Goods to another storage place. The cost of any transfer and the risk of such transfer shall be borne by the Company, unless the transfer has been effected by the Company in its sole discretion in the interest of protecting the Goods, or by reason of circumstances beyond the Company's control in which case, such transfer will be effected at the sole and absolute discretion of the Company at the sole risk and expenses of the Customer. If the Goods are transferred to another storage place, the Company shall notify the Customer, but failure to notify the Customer shall not give the Customer any right of claim against the Company.

7. ADMITTANCE TO PLACE OF STORAGE

The Company shall give to the Customer and/or any persons authorised by the Customer access to the place of storage of the Goods subject to the following conditions and any other formalities prescribed by the relevant authorities being complied with:

- (I) reasonable prior notice;
- (II) all persons visiting the place of storage must comply with the Company's regulations and procedures;
- (III) access is only provided during ordinary working hours at the warehouse facilities and with attendance by an employee or agent of the Company; and
- (IV) the Customer shall be liable for any cost of attendance incurred in relation to such visit and for any damage caused directly or indirectly by such persons.

8. DELIVERY OF GOODS

- (a) The Customer shall ensure that the documents required for receipt, despatch, and instructions, shall be delivered to the Company on or prior delivery to and receipt by the Company of the Goods to the Company.
- (b) A statement by the Customer as to the time of delivery of the Goods will not be binding on the Company and the Company will not be taken to guarantee and gives no representation or warranty as to the arrival time of the Goods, a reasonable time shall be given to the Company to carry out instructions. If the Company is unable to do so, or is unable to perform any obligation under an Agreement, because of any reason beyond the Company's control including but not limited to acts of God, war, work stoppages, public enemies, seizure under legal process, strikes, lockouts, riots and civil commotions; or because of loss or destruction of Goods or any other excuse provided by law, the Company shall not be liable for failure to carry out such instructions and the Goods remaining in storage will continue to be subject to regular storage charges. All timings are subject to change without notification. Time is not of the essence in performance of the Services by the Company.
- (c) Delivery of Goods which are done during the Company's ordinary working hours shall be charged at the Company's prevailing tariff rates. If the Customer requires work to be executed outside the Company's ordinary working hours, the Company has the right to decide whether or not it accepts such instruction, and if it does, any additional charges incurred thereby shall be borne by the Customer.
- (d) In the event that the Customer instructs the Company that Goods for storage in a certain quantity will be delivered to the Company at a certain time, or that Goods for re-delivery in a certain quantity will be collected at a certain



time and the Company arranges for labor and equipment to carry out such instructions of the Customer, the Customer will reimburse the Company for any and all costs and expenses incurred by the Company if the Customer fails to deliver or collect the Goods or any part thereof or fails to deliver or collect the Goods or part thereof at the time stipulated by the Customer.

- (e) If the Customer instructs the Company to take delivery of Goods but fail to arrive for any reason whatsoever, the Customer undertakes to pay the Company on an indemnity basis for all costs and expenses incurred by the Company in taking any steps in accordance with the Customer's instructions.
- (f) The Customer shall be additionally liable for (i) surcharge/summons due to incorrect weight declaration of the Goods by the Customer; (ii) trucking charges for delivery to any area outside the agreed area (e.g. trucking from/to warehouse located in Port Klang West Port to/from area outside Port Klang West Port, additional trucking charge shall be impose); (iii) diesel surcharge; (iv) crantage and forklift services; (v) container repairs and cleaning; (vi) cost of certified lifting team for any operation involving hydraulic truck crane; (vii) escort for transportation of oversized/out of gauge cargo; (viii) charges/penalties payable to any governmental authorities; (ix) costs/charges/penalties for cancellation/termination of, and changes to, any instructions by the Customer; and (x) all other charges including demurrage charges, detention charges, shipping charges (LCL, FCL), custom duties, cargo insurance, and government service tax.
- (g) Unless otherwise stated, the Customer warrants that the Goods will be in good condition, and if packed, be properly packed when delivered to the Company. If the Goods appear to be in a damaged or defective condition upon delivery to the Company, the Company will be entitled but not obliged to take such steps as may be necessary to protect the Customer's interest against the carrier or any other party at the Customer's sole risk and expense. The Customer will not be entitled to question the manner in which The Company has carried out such steps as aforesaid to protect the Customer's interest. The Company will promptly notify the Customer of any action taken, but failure to notify the Customer will not give the Customer any right of claim against the company.

9. TALLYING / WEIGHING / MEASURING OF THE GOODS

- (a) The Company will not be obliged to weigh or measure the Goods in storage if no instructions to carry out weighing or measurement of the Goods are given to, and accepted by, the Company, as evidenced in writing or by performance. Notwithstanding the foregoing, the Company will be at liberty to effect weighing and/or measurement of the Goods in order to ascertain whether the weight and/or measurement of the Goods comply with the specifications of the Goods received from the Customer. In the event that the weight and/or measurement of the Goods determined by the Company differ from those specified by the Customer, the cost of carrying out the weighing and/or measurement of the Goods by the Company will be borne by the Customer.
- (b) Without prejudice to the provisions of clause 25 ("LIABILITY AND LIMITATION OF DAMAGES"), the Company will be liable for any direct loss and/or damage to the Goods which may arise from the weighing and/or measurements of the Goods but only if such weighing or measurements have been carried out by the Company on the Customer's instructions.
- (c) Packages may be opened for examination of the contents thereof at the Customer's request, but the Company will at all times be entitled, but not obliged, to do so if it suspects that the contents have been wrongly described by the Customer. Should the examination reveal that the contents differ from those described, the cost of the examination will be borne by the Customer.
- (d) All operations including sampling, taring, tallying, weighing, measuring and receiving the Goods under judicial survey, will be undertaken only on the Customer's specific instructions and all costs thereof and relating thereto will be payable by the Customer and, if first paid by the Company, will be reimbursed to the Company by the Customer forthwith upon demand.



- (e) Notwithstanding clause 9(d) above, the Company will be entitled, but not obliged, and the Customer hereby authorizes The Company to take any action with respect to the Goods that The Company considers to be necessary and/or in the Customer's interest, at the Customer's expense and risk.

10. PACKING OF THE GOODS / CONTAINERS / LOADING / UNLOADING

- (a) Except where the Company is instructed in writing to pack the Goods, the Customer warrants that all the Goods have been properly and sufficiently packed and the Company will not be liable for any loss, damage or expenses whatsoever incurred or suffered by the Customer as a result of the flawed, faulty and/or insufficient packing of the Goods.
- (b) If a container has not been packed or stuffed by the Company, the Company will not be liable for loss of or damage to the contents thereof if caused by:
 - (I) the manner in which the container has been packed or stuffed;
 - (II) the unsuitability of the contents for transportation in containers;
 - (III) the unsuitability or defective condition of the container provided however the Company may be liable for loss or damage to the contents thereof, if, and only if, the container was supplied by or at the direction of the Company, and it is proven that the unsuitability or defective condition (i) arose as a result of the negligence of the Company or (ii) would have been apparent upon reasonable inspection by the Customer or Owner or Persons acting on behalf of either of them or (iii) arose as a result of the peculiarity of the Goods and such peculiarity was made known to the Company in advance; or
 - (IV) The Container not being properly sealed at the commencement of any transportation.
- (c) Where the Company is instructed to provide a container and such instructions are accepted by the Company, as evidenced in writing or by the Company's shipment of the Goods in a container, the Company is not under an obligation to provide a container of any particular type or quality.
- (d) The Customer warrants that it has complied with all laws and regulations relating to the nature, condition, packing, handling, fumigation, storage and transportation of the Goods.
- (e) In the event that the loading and/or unloading time under any bill of lading and/or charter party in respect of the Goods is inadequate regardless of the cause, all costs resulting therefrom, including without limitation any demurrage charges will be borne by the Customer, notwithstanding that the Company was the party that accepted or entered into the bill of lading and/or charter party from which such aforesaid costs arise.
- (f) Any additional expenses of an exceptional nature, including without limitation any higher wages arising from the loading and/or unloading of the Goods outside the Company's ordinary working hours will not be included in the charges, unless specifically stipulated in writing and agreed to by the Company, and all such expenses will be borne by the Customer.

11. HANDLING

- (a) The handling charges cover the ordinary labor involved in receiving Goods at warehouse door and transferring the Goods to their first place of rest in the warehouse and subsequent returning Goods to the warehouse door. Additional Handling charges apply for any intermediate movement from the Goods' first place of rest in the warehouse for any additional Services. Handling In/Out and devanning charges are due and payable on receipt of the Goods.



- (b) Unless otherwise agreed, labour for unloading and loading Goods will be subject to a charge. Additional expenses incurred by the Company in receiving and handling damaged Goods, and additional expense in unloading from or loading into cars or other vehicles not at the warehouse door will be charged to the Customer.
- (c) Labor and materials used in loading rail cars or other vehicles are chargeable to the Customer.
- (d) When Goods are ordered out in quantities less than in which received, the Company may make an additional charge for each order or each item of an order.
- (e) The Company shall not be liable for demurrage, delays in unloading inbound cars, or delays in obtaining and loading cars for outbound shipment unless the Company has failed to exercise reasonable care.

12. REMOVAL OF GOODS

- (a) The Company shall, after receiving full payment of all monies due and owing to the Company, allow the Goods stored with the Company to be released to the Customer or its agent. All costs and expenses in connection therewith shall be borne by the Customer, if the Goods have been insured through the Company, the insurance premium and cost plus any increases therein will always be charge on the basis of a full month (that is, a part of a month will count as a full month).
- (b) The Company shall only be bound to any assignment or transfer made by the Customer with any third party in respect of any Goods stored with the Company only if:
 - (I) the Company has received in full all monies due and owing to it and prior written notice of the assignment or transfer; and
 - (II) the Customer procures that the third party enters into a new Agreement with the Company in respect of the storage of the Goods with the Company until the release thereof to such third party in accordance with these GTC. Upon the new Agreement taking effect, the existing Agreement between the Company and the Customer in respect of the Goods or part thereof so transferred shall automatically terminate.
- (c) Notwithstanding the aforesaid, the Company will have rights, at any time, to require the removal of the Goods received for storage prior to the expiration of the storage period as agreed, without having to provide the Customer any period of notice, if in the discretion of the Company there is valid and/or urgent reason to do so. A valid and/or urgent reason will, inter alia, be deemed to exist if the Customer has consistently failed to comply with one or more provisions of these GTC, or if the Company is of the opinion that the Goods is or is likely to cause loss and damage to other Goods, storage place and equipment, or harm or injury to person(s); or if the Goods are perishable or liable to inherent changes which in the Company's opinion is or is likely to cause a decrease in value of the Goods, and/or the Customer has neglected to give instructions for preventing or coping with such situation.
- (d) The Customer shall remain liable for storage charges up to and including the date the Goods are released from the place of storage by the Company. If the Goods in the Company's custody are destroyed by fire or other causes, the date of destruction shall count as the date of release.
- (e) If the Company in good faith believes that the Goods are about to deteriorate or decline in value to less than the amount of the Company's lien before the end of the next succeeding storage month, the Company may specify in the notification under this section any reasonable shorter time for removal of the Goods and in case the Goods are not removed, may sell them at public sale held one week after a single advertisement or posting as provided by law.



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- (f) The Customer declares that the Company has an absolute and unqualified right to require the Customer to remove its Goods from the Company's facilities, at the Customer's expense; and that the Company has an absolute and unqualified right to exercise the enforcement of the Company's lien for settlement of all charges, including but not limited to reasonable legal fees incurred by the Company in the exercising of such lien or eviction. The Customer shall also hold the Company harmless and release absolutely and forever the Company from any claims, obligations, suits, actions or causes of actions or legal fees incurred by the Customer, which may arise from the Company exercising such rights and/or from the final disposition of the Customer's merchandise.

13. EXTRA SERVICES (SPECIAL SERVICES)

- (a) The Company will carry out such Services in respect of the Goods as may be required by the Customer, that are accepted by the Company, as evidenced in writing or by performance, including but are not limited to, sampling, handling, servicing, packing, re-packing, bundling, re-bundling, piling, re-piling, lotting, weighing, as well as re-delivery of the Goods at the agreed Charges and arranging of the aforementioned as agreed, based on these GTC. Any other work which the Company does not wish to undertake may, after the prior approval of the Company, be executed by or on behalf of the Customer, subject to any conditions which may be laid down by the Company, under the supervision of the Company and Customer will pay any and all costs and expenses incurred by the Company. The Company will not be liable for any loss, damage or expenses incurred or suffered by the Customer in carrying out such work.
- (b) Notwithstanding any other provisions of these GTC, the Company will be entitled, without providing any reasons whatsoever, to refuse to accept any instructions which may be given by the Customer in relation to the provision of the Services.

14. SALE OR DISPOSAL OF GOODS

- (a) The Company shall be entitled to sell or dispose of:
 - (I) any Goods which are perishable which are not taken up immediately upon arrival or which are insufficiently addressed or marked or otherwise not readily identifiable, without any notice to the Customer and payment or tender of the net proceeds of any sale of such perishable Goods after deduction of any charges and expenses due to the Company will be equivalent to delivery of such perishable Goods. All charges and expenses arising in connection with the storage, sale or disposal of such perishable Goods will be borne by the Customer.
 - (II) non-perishable Goods which in the opinion of the Company cannot be delivered either because they are insufficiently or incorrectly addressed or because they are not collected or accepted by the Customer or the consignee of the Goods or for any other reason, upon giving fourteen (14) days' notice in writing to the Customer. The aforesaid fourteen (14) days' notice in writing will not apply in respect of perishable Goods and the Company will be entitled to exercise such rights of sale at any time at the Company's sole and absolute discretion.
- (b) All charges and expenses arising in connection with the storage, sale or disposal of the Goods will be borne by the Customer.

15. DANGEROUS GOODS

- (a) The Company shall not accept or deal with any Goods of an explosive, flammable, corrosive, noxious or dangerous nature or any Goods which may possibly cause damage or be detrimental to the warehouse or to other Goods stored in the warehouse, or which are classified as dangerous or hazardous Goods by any laws or regulations, or



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Goods or any Goods likely to cause damage ("Dangerous Goods"). The expression "Goods likely to cause damage" includes Goods likely to harbour or encourage vermin or other pests.

- (b) If the Company however agrees in advance to accept any Dangerous Goods under these GTC, the Customer shall ensure that the Dangerous Goods are accompanied by a full declaration of their nature and contents, and properly and safely packed and labeled in accordance with applicable laws and regulations for the time being in force in the relevant jurisdiction(s) including ensuring that all such packages are clearly and indelibly marked to show the hazardous nature of their contents. The attention of the Customer is directed to the laws and regulations imposing criminal or civil penalties for failure to properly declare, mark and package Dangerous Goods.
- (c) Notwithstanding that the Company may have accepted the Dangerous Goods under arrangement previously agreed between the parties in writing, the Customer agrees that:
 - (i) the Dangerous Goods may be so destroyed or otherwise dealt with by the Company at its sole discretion and in any way deemed fit by the Company at the Customer's risk and expense on account of risk to other Goods, property, life or health; and
 - (ii) the Company shall be fully indemnified from and against any or all fines, penalties, expenses, claims for damage, loss or injury to any property or persons caused by the Dangerous Goods, or any other perishable or special Goods delivered to the Company in accordance with these GTC.
- (d) The Company will not be liable to Customer or any other Persons, or have any obligation to reimburse Customer or any other Persons, for any loss or damage to the Goods occurring at any time by reason or by means of fire unless such fire will have been caused by the gross negligence or willful misconduct of the Company.

16. PAYMENT TERMS, CHARGES, FREIGHT, DUTIES, TAXES, ETC.

- (a) All amounts shall become due and payable by the Customer (i) immediately upon receipt of an invoice from the Company in respect of such amounts; or (ii) on such date as may be specified in the Company's invoice. Notwithstanding the above, interest shall not accrue on the invoiced amount until fourteen (14) days after issuance of such invoice. All payments shall be made by the Customer without deduction or set-off against any claim the Customer may have against the Company. In the event that the Customer fails to pay any amounts which are due and payable hereunder or upon notification thereof by the Company, interest will be payable on such amounts at the rate of 2% per month (calculated on calendar month basis). The Customer may direct any enquiry on any invoices to the Company within five (05) working days from the date of the invoice, failing which it shall be deemed to have confirmed that the invoices is correct for all purposes.
- (b) All Agreement are valid during the time of offer by the Company and are subject to withdrawals or revisions before acceptance by the Customer. Unless otherwise agreed to in writing by the Company, the Company will be at liberty to revise an Agreement after its acceptance by the Customer with or without prior notice to the Customer, in the event of including but not limited to changes in the currency exchange rates, rates of freight, insurance premiums, general port charges and any other rates or charges on which the Agreement to the Customer was based, regardless of the cause of such changes.
- (c) Unless otherwise stipulated in writing and agreed to by the Company, expenses will be charged to the Customer and will be payable by the Customer and are not included in the charges. Such expenses including but are not limited to, postage expenses, teleprinter, telegram and telephone charges, stamp fees, import duties and excise, statistical duties, consular and attestation fees, customs formalities, emergency surcharges, security surcharges, congestion surcharges, piracy risk and war risk surcharges, currency charges, increase in rates, costs of preparing shipping documents and obtaining bankers' guarantees (if any), cost of weighing, measuring, tallying, taring, sampling and repairing, bundling or re-bundling, packing or repacking, crantage, additional costs of handling heavy objects, insurance premiums, all extra costs such as warehousing charges and quayside charges or wharfage



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charges for consignments missing a connection, demurrage for detention or delay of vessels, trucks or other transport, hire of tarpaulins, overtime pay, the cost of working outside the Working Hours, cost of providing watchmen and all other out-of-pocket expenses whatsoever. The Company will issue a separate invoice in respect of such aforesaid expenses, fees, duties whatsoever and the Customer will pay all such expenses, fees, duties whatsoever to the Company within fourteen (14) days of its receipt of an invoice from the Company.

- (d) The Customer will be liable for any taxes, deposits or outlay of any kind whatsoever which are levied or imposed by the authorities at any port or place in connection with the Goods and for any payments, fines, expenses, loss or damage whatsoever incurred or sustained by the Company in connection therewith (collectively, "Taxes and Other Payments"). Unless otherwise agreed to by the Company in writing, the Customer will pay to the Company immediately all freight, duties, and all other costs and expenses relating to the transportation of the Goods and/or customs requirements upon arrival or dispatch of the Goods which are being received or forwarded by The Company respectively. Any risk of currency exchange fluctuations will be borne by the Customer.
- (e) The Customer shall be charged with any expenses incurred by the Company in complying with any regulations or in complying with any other statutory or regulatory duties imposed upon it from time to time in relation to the Goods. If the Company has to commence legal proceedings for recovery of payment of its invoices, the Customer shall be liable for all costs and expenses (including legal costs on a full indemnity basis) incurred by the Company in connection therewith.
- (f) The Company will be entitled to charge the Customer a reasonable amount in addition to the Charges for any operations of an unusual nature and/or which requires additional time or effort to carry out.
- (g) The Company will be entitled to retain and be paid all brokerage fees, commissions, allowances and other remunerations, received by the Company from third parties, in connection with the Agreement, the GTC and/or the Services.

17. LIEN AND RIGHTS OF RETENTION OF GOODS, DOCUMENTS, ETC.

- (a) The Company is entitled to retain the Goods, any document relating to the Goods and moneys which the Company may hold on behalf of the Customer at the Customer's sole expense and risk as security until the Charges and all other charges, costs and expenses which are due and payable to the Company has been paid to the Company or, if the Goods are to be forwarded on to other parties, to collect the sum due on the subsequent delivery.
- (b) All Goods, documents and/or moneys will be held by the Company subject to a general lien and right of retention whether such lien and right are afforded by law, the GTC or otherwise, for money due to the Company whether in respect of the Charges or for other expenses, charges or costs payable to the Company by the Customer and/or the owner of the Goods. The lien retention right will also extend to any insurance claims collected on behalf of the Customer by the Company, and, as far as necessary, the right will be deemed to have been transferred to the Company for further security.
- (c) In the event that the Customer fails to make payment of the charges or any other moneys whatsoever due to the Company within fourteen (14) days from the day when such sums become payable, the Company will be entitled to utilise any and all such moneys held by the Company and/or sell the Goods by auction or otherwise at the Company's sole and absolute discretion and at the expense of the Customer and the proceeds (after deduction of sale expenses, storage charges, etc.) may be applied by the Company in or towards satisfaction of such indebtedness by the Customer to the Company. In the case of perishable Goods, the Company need not await the expiry of the aforesaid fourteen (14) days and may exercise such rights of sale earlier at the Company's sole and absolute discretion. Any balance of the proceeds from the sale of the Goods and/or any balance of the moneys held by the Company after the proceeds of sale and/or the moneys have been applied in or towards the satisfaction of such indebtedness by the Customer to the Company will be paid to the Customer.



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(d) The Customer agrees and acknowledges that:

- (I) the right of lien provided to the Company under these GTC ranks in priority to any other security right that it may give to any other person in relation to the Goods and are in addition to all other rights allowed by law to the Company against the Customer for monies due and owing to the Company;
- (II) in exercising its rights of lien in accordance with these GTC, the Company shall be deemed to have sold the Goods in a commercially reasonable manner if it sells the Goods in the usual manner in any recognised market therefor, sells at the price current in that market at the time of the sale, or otherwise sells in conformity with commercially reasonable practices among dealers in the type of the Goods sold. The fact that a better price could have been obtained by a sale at a different time or in a method different from that selected by the Company is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner.

18. SECURITY

The Company may, at the expense and risk of the Customer, require the Customer to furnish a deposit or guarantee for monies in connection with the performance of any Services.

19. SHIPPING

The Customer agrees not to ship Goods to the Company as the named consignee. If in violation of this Agreement, Goods are shipped to the Company as "named consignee", the Customer agrees to notify carrier in writing prior to such shipment, with a copy of such notice to the Company, that the party named as consignee is a Company, and the Company has no beneficial title or interest in such property. The Customer further agrees to indemnify and hold harmless the Company from any and all charges of any nature, in connection with Goods so shipped. The Customer further agrees that, if it fails to so notify carrier as required by this section, the Company shall have the right to refuse any such Goods and shall not be liable or responsible for any loss, injury, or damage of any nature to, or related to, such Goods. The Customer agrees that all promises contained in this section will be binding on the Customer's heirs, successors and assigns.

20. DOCUMENTS OF TITLE

Documents of title, including warehouse receipts and stock certificates, may be issued either in physical or electronic form at the option of the Company.

21. BONDED STORAGE

- (a) A charge in addition to regular rates will be made for merchandise in bond.
- (b) The Goods are not necessarily in free circulation and may require customs clearance and payment of duty, value added tax or other local or national taxes to be arranged and paid for by the Customer before the Goods can be removed from the warehouse.

22. DECLARATION

The Company will be under no obligation whatsoever to make any declaration which may be required under any statute, convention or contract as with regards to the nature or value of the Goods or with regards to any special



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requirements relating to the delivery of the Goods unless expressly instructed by the Customer in writing and the Company agrees in writing to make such declaration or expresses such Agreement by making such declaration.

23. FORCE MAJEURE

- (a) No party shall be liable for any delay or other non-performance resulting from circumstances or causes beyond its reasonable control, including but are not limited to the following events which shall, inter-alia, be regarded as force majeure events: war, threat of war, official action, quarantine, government measures, requisitioning, seizure, strike, lock-out, quarantine, civil disturbance, riot, looting, sabotage, interference with communications, lack of transport, labour and/or storage accommodation, interruption of power supplies, mechanical failure of vehicle or truck, storm, fog, lightning, flood, high and low tide, frost, freezing, ice, heat, fire, explosion, nuclear radiation, water used against fires, smoke, loss, subsidence or collapse of the ground or any storage facility, water leakage or seepage, dampness odour, stench, worms and rodents, damage through rats, mice, insects and other creatures, changes to the natural properties of the Goods, inherent changes in quality, spontaneous deterioration, self-generated heat, pulverization, combustion, explosion, drying, mould, yeasts, leakage, rot and mildew, rust and sweating, breakage of glass/wickered bottles/flasks/cast-iron/other brittle articles, wheel puncture, unordinary traffic, congestion or gasoline shortage due to strike and generally every external calamity.
- (b) If any force majeure event prevents, hinders, or delays the Company's performance of any Services for a period exceeding three (03) months, the Company may, notwithstanding any provisions herein and at its sole option, terminate any Agreement for the provision of any service with immediate effect and without any further liability to the Customer or any other person entitled to the goods.
- (c) All additional costs which may be incurred as a result of a force majeure event, including but not limited to transportation and storage charges, warehouse or yard rental, demurrage for vessels or trucks, insurance premium, charges in respect of delivery from warehouses, bonded or otherwise, will be borne by the Customer and will form part of the debt due and owing to the Company by the Customer mentioned in clause 16 ("PAYMENT TERMS, CHARGES, FREIGHT, DUTIES, TAXES, ETC") hereof on which interest will be chargeable.

24. INSURANCE

- (a) The Company will not be obliged to take out any insurance on the Goods for any risk whatsoever. In the event that the Customer requests the assistance of the Company to take out any insurance on the Goods for and on behalf of the Customer, the Company may, upon the written request by the Customer and at its sole and absolute discretion, take out insurances on the Goods against such risks as may be notified by the Customer. The Company will not incur any liability whatsoever to Customer or to any other Persons in the event it elects not to procure any such insurance. The Company will not be responsible as regards to the choice of the insurer and/or its ability to pay under the insurances, nor will the Company be liable for any inability to place insurances requested by the Customer by reason of an insurer's requirement which the Company considers, in its sole opinion, to be unreasonable. All insurances on the Goods will be taken out at the Customer's expense and risk and all insurances will be subject to the usual exceptions and conditions of the policies of the relevant insurance company or underwriter. By requesting the Company to effect insurance, the Customer authorises the Company to make all arrangements with the insurer at the Company's sole discretion, including arrangements regarding the conditions of insurance and settlement of claims in respect of any damage. The insured value will be the value stated in writing by the Customer or the Company's estimate of the current value of the Goods. The risks required to be covered will be clearly stated in writing by the Customer to the Company. A mere statement by the Customer of the value is not sufficient and the Company will not be obliged to take out any insurance on the Goods where it is not sufficiently informed of the risks to be covered.
- (b) When acting as authorised agent by virtue of clause 24(a) hereof, the Company will be entitled to collect the amount of any claims paid out by any insurer. The Company will be entitled to deduct any amounts that are due



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and payable by the Customer to the Company from any amounts received by the insurer before paying the balance to the Customer.

- (c) The Company will not be under any obligation to effect a separate insurance on each consignment but may declare any open or general policy to be applicable to the entirety of the Goods.
- (d) The Company will not be liable for any loss arising from the failure or refusal by any insurer to pay in full or in part any amounts under any insurance as a result of any circumstance for which the Company cannot be held liable regardless of the manner in which the insurance was effected by the Company and notwithstanding that the Company may have charged the Customer any arrangement fees in taking out such insurances on behalf and/or at the request of the Customer.
- (e) The Customer is obliged to take out and maintain adequate insurance covering damage that can be caused by the Goods. Upon request, the Customer shall make the insurance policy available to the Company for inspection and provide copies.
- (f) In the event that the Company arranges insurance on the Goods in its own name, it will, if so requested by the Customer, transfer or assign its rights to claim under such insurance to the Customer.
- (g) Where the Company utilises derricks or any other equipment for carrying out the instructions given by the Customer, it will be entitled to arrange insurance at the Customer's sole expense to cover the Company's risks arising from the use of such equipment.

25. LIABILITY AND LIMITATION OF DAMAGES

- (a) All Services shall be performed by the Company for the Customer's account and risk. The Company will not be liable for any loss, damage and/or deterioration of the Goods unless such loss, damage and/or deterioration is proven to have been caused by fraud, or gross negligence or wilful misconduct of the Company or its employees, agents and subcontractors or falling within clause 23 ("FORCE MAJEURE"), the Company shall not be liable whether in Agreement, tort or otherwise for any loss or damage or deterioration of the Goods, where, for example, such loss or damage or deterioration occurs in circumstances including:
 - (I) any loss, damage or deterioration of any Goods which have been stored on open ground or which can only be stored on open ground or which the Company customarily stores on the open ground;
 - (II) any loss or damage whatsoever arising from the act or omission of the Customer or any person authorised thereby, or the Company's compliance with any Customer instruction, or insufficiency of preparation, packing, stuffing, storage, containerisation, labeling or marking of the Goods (except where such Services have been provided by the Company pursuant to these GTC);
 - (III) any loss or damage caused by or in connection with destroying, jettisoning, abandoning, unloading, selling or otherwise dealing with the Goods or part thereof which in the opinion of the Company is necessary or advisable for the safety or security of any person or property, or due to theft or burglary.
- (b) Notwithstanding any other provision of these GTC, the Company shall not in any event be liable for the following:
 - (I) the natural quality of the Goods, changes in the quality or character, inherent vice, decay, drying out, powdering, heat, heating, melting, staining, sweating, fermenting, freezing, rusting, mildew, mould, dampness, dust, oil, discolouration, evaporation, smell or stains from contact with other Goods or fuel, putrefaction, water of any kind, rain or spray, effects of climate, drainage, leakage, wastage, loss of weight, breakage, splitting, bending, chaffing, shrinkage, hook holes, rats, mice, insects and other vermin, explosion of any of the Goods whether received with or without disclosure of its nature, insufficiency,



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- soiling, injury to, distortion, pressing or bursting of packages, adherence or coverings, failure to protect the Goods or inaccuracy, obliteration or errors in or insufficiency or absence of marks, numbers, address or description of the Goods;
- (II) any loss, damage and/or deterioration of the Goods caused directly or indirectly by existing or threatened war declared or undeclared, hostilities, warlike operations, civil war or civil commotion, revolution or the operations of international law, governmental decree, requisitioning, legislation or expropriation, confiscation orders, court orders, injunctions or third party claims, strikes, lockout, sabotage or power breakdown;
 - (III) loss, damage and/or deterioration of the Goods caused directly or indirectly by fire, smoke, explosion, water used for extinguishing fires, burst water piping, flood, tempest, earthquake or any other extraneous calamity or Acts of God;
 - (IV) errors in any delivery orders, confirmations, receipts, or any other document;
 - (V) improper or inadequate packing or protection of the Goods;
 - (VI) consequential, special, indirect, incidental or exemplary damages, costs, expenses or losses (including loss of profits, opportunity costs, business or anticipated savings or loss of market) whether in tort, Agreement, under statute or otherwise by reason or in connection with any Services performed in accordance with these GTC;
 - (VII) loss or damage to the Goods whilst the Goods are in transit, possession, control or custody of steamship companies, railways, airlines or other carriers. If the Goods are landed from any vessel in a damaged or pillaged condition and an examination might be held or other action taken by the Company in respect of thereof, no responsibility attaches to the Company for any failure to hold such examination or take such other action unless the Company has been given sufficient notice to enable it to arrange for such examination or for the taking of such other action as the case may be;
 - (VIII) loss or damage to Goods which are of a fragile nature, antiques, works of art and pictures, precious metal objects and jewellery, precious stones, bank notes, coins, travellers cheques, computer data, cards and documents entitling the holder to receive cash, perishables, live animals and radioactive cargoes bullion even where the loss or damage has arisen from negligence of the Company or its agents;
 - (IX) all other causes which are beyond the control of the Company.
- (c) Subject to clauses 25(a) and 25 (b) and unless otherwise agreed in writing by the Company, the Company's total liability to the Customer whether in Agreement, tort (including negligence or breach of statutory duty) or otherwise for any loss, damage or liabilities caused or arising from any breach or failure of the Company in performing its obligations to the Customer hereunder shall be limited to the lesser of either based on the principle of indemnity and limited to RM2,800.00 (Malaysian Ringgits Two Thousand Eight Hundred Only) or 583 SDR (means Special Drawing Rights, the unit of monetary value or compensation as determined by the International Monetary Fund but the primary currency for the purpose of the contract of carriage referred to in this GTC, the SDR shall be denominated by the Malaysian Ringgits (RM)) of account payable per shipping unit or RM5.00 (Malaysian Ringgit Five only) or two SDR per gross kilogram weight on the goods lost or damage. Subject always to a maximum sum of RM100,000.00 (Malaysian Ringgits One Hundred Thousand only) or such other amount in equivalent currency whichever is applicable in any event in respect of any one claim or sequence of events arising from one and the same cause regardless of the number of warehouse receipts or stock certificates held by such Customer.
- (d) For purposes of these GTC, the weight of the Goods shall be measured on a metric tonnage basis in accordance with the Company's standard practice, and the cost price of the Goods shall be calculated by reference to the



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invoiced cost of the Goods (excluding freight and insurance) or in the absence of any invoice, by reference to the normal cost of goods of the same kind and quality.

- (e) Compensation calculated in accordance clause 25(c) shall be the Customer's sole and exclusive remedy against the Company for any loss, damage or expense suffered by the Customer. Nothing in these GTC shall apply to limit or restrict the amount recoverable from the Company as compensation for any death or personal injury caused by the negligence or breach of duty (statutory, contractual or otherwise) of the Company.
- (f) Goods are not insured by the Company against loss, damage, or injury however caused.
- (g) The Company shall not be liable for any duties, taxes, imposts, levies or other charges, including without limitation, sales, property or inventory tax ("taxes") in respect of the Goods whatsoever that may be levied on the while on the books of the Company. The Customer shall indemnify the Company and save and hold the Company harmless from liability for such taxes howsoever arising, including but not limited to any legal fees and court costs in respect thereof.

26. NOTICE OF CLAIM

- (a) All claims for damage or loss to, or misdelivery or non-delivery or delay in delivery of, any Goods shall be made in writing to the Company within seven (07) days after delivery of the Goods alleged to be damaged or in the case of Goods alleged to be lost or which the Company fails to produce, within seven (07) days after the time when the Goods should in the ordinary course of events have been released or in any other case, within seven (07) days from the date of the event giving rise to the claim. The Company shall be under no liability unless such claim is made within the time stipulated.
- (b) Unless applicable mandatory laws provides otherwise, any right of action against the Company shall be extinguished if the claim or suit was not brought in the proper forum and written notice thereof received by the Company within nine (09) months from the date the Goods arrived (or should have arrived) at the destination or the date the Company notifies the loss of the Goods to the Customer, whichever date is the earlier.

27. INDEMNITY

- (a) The Customer covenants and agrees to indemnify, defend (with counsel acceptable to the Company), save and hold harmless the Company, its subsidiaries and affiliates, and their respective officers, directors, agents, employees, successors and assigns (collectively, the "Indemnitees"), from and against any and all losses (as hereinafter defined) of whatsoever kind and nature, whether incurred by the Company or alleged by others, in warranty, contract, negligence, strict liability, tort or otherwise, arising in whole or in part as a result of, or in connection with, any of the following: (i) any breach of any representation or warranty set forth in the Agreement or these GTC by Customer, its directors, officers, employees, agents, subcontractors or parties on whose behalf customer is acting and entering into the Agreement (collectively, the "Customer Parties"), (ii) negligence by any Customer Parties, (iii) any defect of any kind in the Goods, (iv) any act or omission of any Customer Parties, (v) violation of any law by any Customer Parties, (vi) an Indemnitees following the instructions of any Customer Parties or implementing such instructions, (vii) any servant, agent or subcontractor or any hauler, carrier, warehousemen, or other person or party whomsoever who may at any time be involved with the Goods, (viii) any insufficiency of the packing of the Goods, (ix) any one or more of the matters provided for in clause 10(b) above, (x) the Company's furnishing of a confirmation for the receipt of Goods pursuant to clause 4,(xi) inaccuracy of any descriptions, particulars and/or information concerning the Goods that is furnished by a Customer Parties or on its behalf, even if such inaccuracy is not due (whether in whole or in part) to any negligence or fault on the part of a Customer, (xii) any and all taxes and other payments, (xiii) failure by any Customer Parties to pay any indebtedness, or (xiv) any injury to or death of persons or damage to property caused by or resulting from the Goods and/or the action or inaction on the part of any Customer Parties, (xv) in connection with clause 15, and (xvi) any general average



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(voluntary sacrifice) or any claims of general average (claims for extraordinary expenditure incurred). As used herein "losses" means any and all liabilities, obligations, suits, claims, losses, damages, judgments, awards, penalties, injuries, actions, costs, fees and expenses (including attorneys' fees and disbursements and costs of investigation, litigation, alternative dispute resolution, settlement, judgment, interest and penalties).

(b) The indemnification provided for herein is without prejudice to any other rights or remedies any indemnitee may have under any law, matters covered by the foregoing indemnity include:

- (I) damage for personal injury, disease or death;
- (II) damages for injury to personal or real property;
- (III) natural resource damages;
- (IV) any and all costs or recalls of such Goods or products, including but are not limited to costs incurred in transportation, labor, removal, installation, fines, penalties and attorneys' fee;
- (V) all expenses, costs and fees incurred by any indemnitee as a result if any claim for indemnification hereunder.

(c) The Company and Customer further agree and acknowledge that the Goods moving by:

- (I) airfreight is subject to specific international treaties and the Customer's recovery of any loss or damage is against the airline carrier and limited in accordance with such treaties. The Customer shall indemnify, defend and hold harmless the Company against any claims for loss or damage to the Goods incurred while in the airline carrier's possession;
- (II) seafreight is subject to the applicable international treaties, and that the Customer's recovery of any loss or damage is against the seafreight carrier and limited in accordance with these or any other conventions that may be applicable. The Customer shall indemnify, defend and hold harmless the Company against any claims for loss or damage to the Goods incurred while in the seafreight carrier's possession; and
- (III) airfreight or seafreight may necessary involve a part of transport undertaken by other means in order to comply with the terms of carriage under any Agreement between the parties. Where this is so, and no international treaty is applicable which covers the additional transport, the Customer's recovery of any loss or damage is against the carrier and limited in accordance with the convention applicable for the majority of the transport, even where that convention does not envisage liability of the kind of transport concerned. The Customer shall indemnify, defend and hold harmless the Company against any claims for loss or damage to the Goods incurred while in the possession of the third party carrier where such carriage was necessary in order to comply with the terms of the Agreement.

(d) To the extent permitted by law, if any Customer party enters any premises owned, leased or controlled by any indemnitee, such customer party hereby waives and agrees to indemnify, defend and hold the indemnitees harmless from, any and all losses that any such Customer party may have or incur as a result of their presence on such premises, whether or not arising out of any act or omission (whether negligent or not) of any indemnitee.

(e) This indemnity shall survive the expiration, termination, or cancellation of the Agreement.

28. GOVERNING LAW AND JURISDICTION

(a) These GTC shall be governed by, and construed in accordance with, the laws of Malaysia, unless otherwise provided in the Agreement or required compulsorily in applicable national law, save that local mandatory laws of



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the site of the warehouse in which the Goods are stored or the site of performance of the relevant Services shall apply to the performance by the Company of the affected obligation or service pursuant to these GTC.

- (b) Unless otherwise provided in the Agreement, the Customer agrees that any claim, dispute or matter arising under or in connection with the Agreement or its enforceability, including, without limitation, any contractual claim, dispute or matter shall be discussed and resolved amicably between the parties, and if not resolved, the dispute shall be referred to and finally resolved under the provisions of the Arbitration Act (2005) in Malaysia and the Customer irrevocably agrees to:
- (I) submit to the rules of the Arbitration Act (2005);
 - (II) consent to service of process by registered mail or in any other manner permitted by relevant law;
 - (III) be bound by any award delivered by the arbitration in Malaysia where the Company may take proceedings in;
 - (IV) the arbitration tribunal shall comprise a single arbitrator to be mutually appointed by the parties or failing such Agreement, by the Chairman of the arbitration board; and
 - (V) the arbitration shall be conducted in the English language.
- (c) Without prejudice to the generality of clause 32(b), in the event any applicable national law stipulate otherwise, causing the submission to Arbitration in Malaysia inapplicable or unenforceable, the Customer agrees that the legal action or proceedings will be brought in the competent court where the Company is domiciled.

29. ASSIGNMENT AND NOVATION

The Company may assign, novate, transfer or subcontract any or all of its rights and obligations under an Agreement to any other company which carries on similar business. The Company shall procure that such assignee: (i) exercises its rights and performs its obligations in accordance with these GTC; and (ii) honors any warehouse receipt or stock certificate issued by the Company prior to the assignment (save that the assignee may, at its discretion, cancel and reissue any such issued warehouse receipt or stock certificate on the assignee's letterhead).

30. SEVERABILITY AND WAIVER

- (a) If any provision of these GTC, or any application thereof, should be construed or held to be void, invalid or unenforceable, the remaining provision of these GTC shall not be affected thereby but shall remain in full force and effect.
- (b) The Company's failure to require strict compliance with any provision of these GTC shall not constitute a waiver or estoppel to later demand strict compliance with that or any other provision(s) of these GTC.

31. MISCELLANEOUS

- (a) Customer is duly authorized to enter into the Agreement and these GTC and to perform its obligations under the Agreement and these GTC and possesses all licenses, permits, consents and approvals required by law to conduct all business which it conducts with respect to the Goods.



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- (b) No course of prior dealings and no usage of trade will be relevant to supplement or explain any terms used in the Agreement or in these GTC. The Agreement and these GTC will be binding upon Customer and its successors and permitted assigns.
- (c) Any notice to be given by the Company under the GTC shall be deemed delivered if addressed to the Customer at the last known contact details (address, fax or email) of the Customer whether or not the Customer acknowledges receipt. Evidence of being sent shall be deemed evidence of receipt immediately where sent by email or fax or within forty-eight (48) hours if sent by post or courier.
- (d) Customer shall comply with all Laws pertaining to the Goods.
- (e) The Company shall not be liable for any delay or non-performance resulting from circumstances or causes beyond its reasonable control (“force majeure”) including storm, fog, lightning, flood, tides, fire, explosion, weather, ice, other natural disasters and other things which the Company could not reasonably prevent. If a force majeure event occurs prevents, delays or hinders performance of Services by the Company, the Company shall give prompt notice of such force majeure event to the Customer. The Customer shall continue to be liable to the Company for all Charges and other expenses incurred by the Company during the period of the force majeure event.
- (f) The failure by the Company to insist, in any one or more instances, upon the performance of any of the terms or conditions of the Agreement or these GTC, or to exercise any right or remedy hereunder, shall not be construed as a waiver of the future performance of any such terms or conditions or the future exercise of such right or remedy.
- (g) The headings used herein are for convenience only and do not form a substantive part of these GTC.
- (h) By requesting that the Company perform the Services and/or by executing the booking confirmation and/or other documentation to which these GTC are attached, Customer covenants and agrees to be bound by the terms hereof and represents and warrants the truth and accuracy of the matters set forth herein to be represented and/or warranted by Customer.
- (i) A person who is not a party to any Agreement subject to these GTC shall have no right under the Contracts (Rights of Third Parties) Act 2001 to enforce any of these GTC.
- (j) If any part of these GTC is found to be invalid, illegal or unenforceable under any enactment or rule of law or by a competent court or tribunal in any jurisdiction, such part shall be held ineffective to the extent of such invalidity, illegality or unenforceability without invalidating or otherwise affecting the other provisions and these GTC shall be construed as if such invalid, illegal or unenforceable part had never been contained herein. Each provision hereof is to be construed as a separate limitation applying and surviving even if for any reason, one or more of the said provisions is held inapplicable or unreasonable in any circumstances.
- (k) The Customer may not assign or transfer the benefit of, and rights under, any Agreement made with Company without the Company’s prior written consent (which consent may be subject to such additional terms as the Company deems necessary).
- (l) The Agreement made between the Company and the Customer which incorporates these GTC shall constitute the entire Agreement between them, and supersede all previous oral and written Agreements between them in relation to the subject matter hereof.
- (m) The Customer shall not use (other than for the purpose of utilising the Service) or disclose to any person any information relating to the Company or any Services provided by the Company or its agents/sub-contractors pursuant to these GTC other than information which is or has become publicly available otherwise than through a breach of any obligation of the Customer.



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- (n) The Customer hereby consents that the Company shall be entitled to use in any manner and for any purpose, or to disclose, information or data provided by or relating to the Customer to any other person in connection with the Company's performance of obligations under these GTC and/or compliance with applicable laws.

32. TERMINATION

- (a) Notwithstanding anything herein to the contrary, the Company may at any time terminate the Agreement by written notice to the Customer, effective immediately if:
 - (I) the Customer commits a material breach of any of the terms of these GTC and such breach is not cured within fifteen (15) days after the Customer being notified by the Company; or
 - (II) the Customer is dissolved, becomes insolvent, is unable (or admits it is unable) to pay its debts as they fall due, enters into an arrangement with or for the benefit of its creditors, goes into liquidation or commits an act of bankruptcy under the laws of its relevant jurisdiction of incorporation, or if a receiver is appointed over any of its assets or anything occurs with analogous effect to the above.
- (b) In the event that the Customer terminates the Agreement unilaterally, the Company will be entitled to a reasonable compensation for the loss it suffers (including but not limited to any loss of profit) as a result of the termination of the Agreement.
- (c) Upon the occurrence of a termination of the Agreement, any Charges or expenses (whether present or future, contingent or otherwise) shall become immediately due and owing by the Customer to the Company.

ADDITIONAL GENERAL TERMS AND CONDITIONS APPLICABLE TO THIS AGREEMENT

Nothing entered hereon shall be construed to extend the Company's liability beyond the standard of care specified in clause 25 ("LIABILITY AND LIMITATION OF DAMAGES") above.