

FEDERATION OF MALAYSIAN FREIGHT FORWARDERS

Standard Trading Conditions

Part 1: General Conditions

Application

1. (a) Subject to sub clause (b) below, all services of the company whether gratuitous or not are subject to these Conditions.
 - (i) The provisions of Part I shall apply to all such services.
 - (ii) The provisions of Part II shall only apply to the extent that such services are provided by the Company as agents.
 - (iii) The provisions of Part III shall only apply to the extent that such services are provided by the Company as principles.
 - (iv) In the event of any inconsistencies between any provisions contained in Part I. In the event of any inconsistencies between any provisions contained in Part I with those contained in Part III the provisions contained in Part III shall apply to the extent that such provisions are inconsistent with those contained in Part I and no further. Save as aforesaid, the provisions contained in Part I shall apply to all services.
 - (b) Where a document bearing a title of or including "bill of lading" (whether or not negotiable) or "waybill" is issued by or on behalf of the Company and provides that the Company contracts as carrier, the provisions set out in such document shall be paramount in so far as such provisions are inconsistent with these Conditions.
 - (c) Every variation, cancellation or waiver of these Conditions or any part of them must be in writing, signed by a Director of the Company. Notice is hereby given that no other person has or will be given any authority whatsoever to agree to any variation, cancellation or waiver of these Conditions.
2. All services are provided by the Company as agents except in the following circumstance where the Company acts as principal.
 - (a) There the Company performs any carriage, handling or storage of Goods but only to the extent that the carriage is performed by the Company itself or its servants and the Goods are in the actual custody and control of the Company, or
 - (b) where prior to the commencement of the carriage 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 carriage, the Company shall be deemed to be contracting as a principal in respect of the that part of the carriage in respect of which the Company fails to give such particulars demanded within 28 days of the Company's receipt of such demand, 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.
 3. Without prejudice to the generality of clause 2,
 - (a) the charging by the Company of a fixed price for a service or services of whatsoever nature shall not in itself determine or be evidence that the Company is acting as an agent or a principal in respect of such service or services;
 - (b) the supplying by the Company of their own or leased equipment, shall not in itself determine or be evidence that the Company in acting as an agent or a principal in respect of any carriage, handling or storage of Goods;
 - (c) the Company acts as an agent where the Company procures a bill of lading or other document evidencing a contract of carriage between a person, other than the Company, and the Customer or Owner;
 - (d) the Company acts as an agent and never as a principal when providing services in respect of or relating to customs requirements, taxes, licenses, consular document, certificates of origin, inspection, certificates and other similar services or incidental thereto.

DEFINITIONS

4. In these conditions, the following expressions, except where the context otherwise requires, or where it is otherwise stated, shall have the following meanings:
 - (a) "Company" means a Federation of Malaysian Freight Forwarders ("FMFF") member who undertakes to provide the service;
 - (b) "Customer" means any person at whose request or on whose behalf the Company provides a service;
 - (c) "Person" includes any individual, persons or any body or bodies corporate;

- (d) "Owner" includes the owner, shipper and consignee of the Goods and any other person who is or may become interested in the Goods and anyone acting on their behalf;
- (e) "Authority" means a duly constituted legal or administrative person, acting within its legal powers and exercising jurisdiction within any nation, safe, municipality, port or airport;
- (f) "Goods" include the cargo and any container not supplied by or on behalf of the Company, or any part thereof in respect of which the Company provides a service;
- (g) "Container" includes any container, flexitank, trailer, transportable tank, flat, pallet or any article used to consolidate goods and any equipment forming part of or connected thereto;
- (h) "Dangerous Goods" include goods which are or may become of a dangerous, inflammable or radio active character or damaging to itself or to other property or so dangerously packed or goods likely to harbour or encourage vermin or other pests, or if owing to legal obstacle as to their carriage or discharge they may involve detention either itself or any other property or person;
- (i) "Hague Rules" means the provisions of the international Convention for the Unification of certain rules Relating to Bill of Lading signed at Brussels on 25th August 1924;
- (j) "Instruction" means a statement of the Customer's specific requirements;
- (k) "Interpretation" except where the context otherwise requires, words in the singular shall include the plural and words in the plural shall include the singular.

OBLIGATIONS OF CUSTOMER

- 5. The Customer warrants that he is either the Owner or the authorized agent of the Owner of the Goods and that he is authorized to accept and is accepting these Conditions not only himself but also as agent for and on behalf of the Owner of the Goods.
- 6. The Customer warrants that he has reasonable knowledge of matters affecting the conduct of this business, including but not limited to the terms of sale and purchase of the Goods and all other matters relating thereto.
- 7. The Customer shall give sufficient and executable instructions.
- 8. The Customer warrants that the description and particulars of the Goods are complete, accurate and correct.
- 9. The Customer warrants that the Goods are properly packed and labeled, except where the company has accepted instructions in respect of such services.

SPECIAL INSTRUCTIONS, GOODS AND SERVICES

- 10. (a) Unless otherwise previously agreed in writing, the Customer shall not deliver to the Company or cause the Company to deal with or handle Dangerous Goods.
 - (b) If the Customer is in breach of sub-clause (a) above he shall be liable for all loss or damage whatsoever caused by or to or in connection with the Goods howsoever arising and shall defend, indemnify, and hold harmless the Company against all penalties, claims, liabilities (civil, criminal or otherwise, damages, costs and expenses whatsoever arising in connection or incidental therewith and the goods may without notice be destroyed or otherwise dealt with at the sole discretion of the Company or any other person in whose custody they may be at the relevant time.
 - (c) If the Company agrees to accept Dangerous Goods subsequently in the sole opinion of the Company that they constitute a risk to other goods, property, life or health or if owing to legal obstacles as their carriage or discharge they may involve detention either of itself or any other property or person, they may without notice be destroyed or otherwise dealt with at the expense of the Customer or Owner without any liability whatsoever attaching to the Company.
- 11. No insurance will be effected except upon express instructions given in writing by the Customer and all insurances effected by the Company unless specifically instructed otherwise by the Customers in writing are subject to the usual exceptions and conditions of the policies of the insurance Company or underwriters taking the risk. Unless otherwise agreed in writing, the Company shall not be under any obligation to affect a separate insurance on each consignment but may declare it on any open or general policy. Should the insurers dispute their liability for any reason whatsoever 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 its customers.

12. Except in accordance with express instructions previously received in writing and accepted in writing by the Company, the Company shall not be obliged to make any declaration for the purposes of any statute, convention or contract as the nature of value of any Goods or as to any special interest in delivery.

13. Unless otherwise previously agreed in writing or otherwise provided for under the provisions of a document signed by the Company, instructions relating to the delivery or release of Goods against payment or against surrender of a particular document shall be in writing and the Company's liability shall not exceed that provided for in respect of misdelivery of Goods.

14. Unless otherwise previously agreed in writing that the Goods shall depart or arrive by a particular date, the Company accepts no responsibility for departure or arrival date of Goods.

GENERAL INDEMNITIES

15. (a) The customer and Owner shall jointly and severally defend, indemnify and hold harmless the Company against all liability, loss, damage, costs and expenses arising out of the Company acting in accordance with the Customer's or Owner's instructions or arising from a breach of warranty or obligation by the Customers or arising from a breach of warranty or obligation by the Customers or arising from the negligence of the Customer or Owner.

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

(c) Advice and information, in whatsoever form as may be given, are provided by the Company for the Customers 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.

(d) (i) The Customer expressly agreed that no servant or agent of the Company (including every independent contractor from time to time employed by the Company) shall in any circumstances whatsoever be under any liability whatsoever to the Customer or for any loss or damage or delay of whatsoever kind arising or resulting directly or indirectly from any act neglect or default on his part while acting in the course of or in connection with his employment and without prejudice to the generality of the foregoing provisions. In this clause, every exemption, limitation, condition and liberty herein contained and every right, exemption from liability, defense and immunity of whatsoever nature applicable to the Company or to which the Company is entitled hereunder shall also be available and shall extend to protect every servant or agent of the Company acting or aforesaid and for the purpose of all the foregoing provisions of this condition, the Company is or shall be deemed to be acting as agent or trustee on behalf of and for the benefit of all persons who are or might be its servant or agent from time to time (including independent contractor as aforesaid) and all such persons shall on this extent be or deemed to be parties to the contract between the Company and the Customer or Owner.

(ii) The Customer shall defend, indemnify and hold harmless the Company from and against all claims, costs and demands whatsoever and by whomsoever made or preferred in excess of the liability of the Company under the terms of these Conditions and without prejudice to the generality of this clause this indemnify shall cover all claims, costs and demands arising from or in connection with the negligence of the Company, its servants, sub-contractors and agents.

(iii) In this clause, "sub-contractor" includes direct and indirect sub-contractors and their respective servants and agents.

(e) The Customer shall be liable for the loss, damage, contamination, soiling, detention or demurrage before, during and after the carriage or property (including but not limited to containers) of the Company or any persons or vessel referred to herein caused directly or indirectly caused by the Customer or Owner or any person acting as servants, agents or independent contractors for or on behalf of either of them.

CHARGES, ETC

16. (a) 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, counterclaims or set off.

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

(c) On all amounts due to the Company, the Company shall be entitled to interest at the rate of 1.5 percent on a monthly basis from the date the amounts are overdue until full realization thereof.

LIBERTIES AND RIGHTS OF COMPANY

17. The Company shall be entitled, except insofar as has been otherwise agreed in writing to enter into contracts on behalf of itself or the Customer and without notice to the Customer.
- (a) for the carriage of Goods by any route, means or person,
 - (b) for the carriage of Goods of any description whether containerized or not on or under the deck of any vessel,
 - (c) for the storage, packing, transshipment, loading, unloading or handling of Goods by any person at any place whether on shore or afloat and for any length of time.
 - (d) for the carriage or storage of Goods in containers or with other Goods of whatever nature.
 - (e) for the performance of its own obligations, and to do such acts as in the sole opinion of the Company may be necessary or incidental to the performance of the Company's obligations.
18. (a) The Company shall be entitled but under no obligations to depart from the customer's instructions in any respect if in the sole opinion of the Company there is good reason to do so in the Customer's interest and the Company shall not thereby incur any additional liability whatsoever, other than its liability hereunder.
- (b) The Company may at any time comply with the orders or recommendations given by any Authority. The responsibility of the Company in respect of the goods shall cease on the delivery or other disposition of the Goods in accordance with such orders or recommendations.
19. If at any time the performance of the Company's obligations, in the sole opinion of the Company or any person whose services the Company makes use of, is or is likely to be affected by any hindrance, risk, delay, difficulty or disadvantage whatsoever and which cannot be avoided by reasonable endeavours by the Company or such other person, the Company may, on giving notice in writing to the Customer or Owner or without notice where it is not reasonably possible to give such notice, treat the performance of its obligations as terminated and place the Goods or any part of them at the Customer's or Owner's disposal at any place which the Company may deem in its sole opinion safe and convenient, whereupon the responsibility of the Company in respect of the Goods shall cease. The Customer shall pay in demand any additional costs of carriage to and delivery and storage at such places and all other expenses incurred by the company.
20. If delivery of the Goods or any part thereof is not taken by the Customer or Owner at the time and place when and where the Company, or any person whose services the Company makes use of, call upon the Customer or Owner to take delivery thereof the Company shall be entitled to store the Goods or any part thereof at the sole risk of the Customer, whereupon the liability of the Company in respect of such goods shall cease and the cost of such storage and all other expenses and liability whatsoever if paid or payable or incurable by the Company shall be paid by the Customer on demand.
21. Notwithstanding clauses 19 and 20, the Company shall be entitled but under no obligation at the Customer payable on demand and without any liability to the Customer and Owner, to sell or dispose of the goods or any part thereof.
- (a) on giving 21 days notice in writing to the Customer all Goods which in the sole opinion of the Company cannot be delivered as instructed, or
 - (b) without notice to the Customer, Goods which have perished, deteriorated or altered, or are in immediate prospect of doing so or which as caused or may be reasonably expected to cause loss or damage to any person or property or to contravene and applicable regulations.
22. All Goods and documents received by the Company or its agents shall be held by them subject to a general lien and right of detention for money due to the Company whether in respect of the services rendered or undertaken by the Company of those or other goods or for other goods or for other charges or costs payable by the Customer; and if the general lien is not satisfied within 28 days of a notice in writing given by the Company to the Customer or in the case of perishable goods within a reasonable time of notice in writing given by the Company shall be entitled to sell or dispose of the Goods or documents by public auction or private treaty or otherwise and the proceeds of sale applied to satisfaction of the lien and the expenses of sale or disposal, without any liability whatsoever on the part of the Company to the Customer.
23. The Company shall be entitled to retain and be paid all brokerages, commissions, allowances and other remunerations agreed to be customarily retained by or paid to freight forwarders.

24. The Company shall have the right to enforce against the Owner jointly and severally any liability of the Customer under these Conditions or to recover from them any sums to be paid by the Customer which upon demand have been paid.

CONTAINERS

25. (a) If a Container has not been packed nor stuffed by the Company shall not liable for loss of or damage to contents if caused by:
- (i) the manner in which the Container has been packed or stuffed,
 - (ii) the unsuitability of the contents for carriage in containers, unless the Company has approved the suitability
 - (iii) the unsuitability or defective condition of the Container provided that where the Container has been supplied by or on behalf of the Company. This paragraph (iii) shall only apply if the unsuitability or defective conditions arose (a) without any negligence on the part of the Company or (b) would have been apparent upon reasonable inspection by the Customer or Owner of person acting on behalf of either of them, (c) peculiarity of the Goods and such peculiarity is not made know to the Company.
 - (iv) if the Container is not sealed at the commencement of any carriage except where the Company has agreed to seal the Container.
- (b) The Customer shall defend, indemnify and hold harmless the Company against all liability, loss damage, costs and expenses arising from one or more of the matters provided for in (a) above.
- (c) Where the Company is instructed to provide a Container, in the absence of a written request to the contrary, the Company is not under an obligation to provide a Container of any particular type or quality.

GENERAL LIABILITY

26. (a) Except insofar as otherwise provided by these Conditions, the Company shall not be liable for any loss or damage whatsoever arising from:
- (i) the act or omission of the Customer or Owner or any person acting on their behalf,
 - (ii) compliance with the instructions given to the Company by the Customer, Owner or any other person entitled to give them,
 - (iii) insufficiency of the packing or labeling of the Goods except where such service has been provided by the Company,
 - (iv) handling, loading, stowage or unloading of the Goods by the Customer or Owner of any person acting on their behalf,
 - (v) inherent vice of the Goods,
 - (vi) riots, civil commotions, strikes, lockouts, stoppage or restraint of labour from whatsoever cause, or
 - (vii) any cause which the company could not avoid and the consequences whereof it could not prevent by the exercise of reasonable diligence.
- (b) subject to clause 14, the Company shall not be liable for loss or damage howsoever caused to property other than the Goods themselves, indirect or consequential loss or damage, loss of profit, delay or deviation.
27. Except in so far as otherwise provided by these Conditions, the liability of the Company in any event for any neglect or default or any other matter or thing whatsoever of howsoever arising and notwithstanding that
- (a) In respect of all claims other than those subject to the provisions of sub-clause
 - (b) below, whichever is the least of
 - (i) the value of, or
 - (ii) M\$5.00 per gross kilogram of, or
 - (iii) not exceeding M\$100,000.00 in any event whatsoever in respect of any one claim.
- the Goods lost, damaged, misdirected, misdelivered or in respect of which a claim arises.
- (c) In respect of claims for delay where not excluded by the provisions of these conditions, the amount of the Company's charges for the services in respect of the Goods delayed.

28. (a) Compression shall be calculated by reference to the invoice value of the Goods plus freight and insurance if paid.
- (b) If there be no invoice value for the goods, the compensation shall be calculated by reference to the value of such Goods at the place and time when they are delivered to the Customer or Owner all their assigns or such persons as instructed by the Customer or should have been so delivered. The value of the Goods shall be fixed according to the current market value, or, if there be no commodity exchange price or current market value, or, if there be no commodity exchange price or current market value, by reference to the normal value of goods of the same kind and quality.

29. By special agreement in writing and on payment of additional charges, higher compensation may be claimed from the Company not exceeding the value of the Goods or the agreed value, whichever is the lesser.

30. (a) The company shall be discharged of any liability whatsoever unless:

(i) notice of any claim is received in writing by the Company or its agent within 14 days after the date specified (b) below.

(ii) suit is brought in the proper forum and written notice thereof received by the Company within 9 months after the date specified in (b) below.

(b) (i) in the case of damage to Goods, the date of delivery of the Goods, and in the case of loss of the Goods, the date the Goods should have been delivered.

(ii) in the case of delay or non-delivery of the Goods, the date that the Goods should have been delivered.

(iii) in any other case, the event giving rise to the claim.

GENERAL AVERAGE

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

MICELLANEOUS

32. Any notice served by post by the Company on the Customer or Owner, shall be conclusively deemed to have to be given on the third day following the day on which it was posted to the address of the recipient of such notice last known to the Company.

33. (a) The defenses and limits of liability provided for by these Conditions shall apply in any action against the Company whether such action be founded in contract or tort or in whatsoever form.

(b) Notwithstanding any provisions to the contrary contained herein, services to goods of perishable nature, such as glass china statutory precious metal or pictures, or goods of perishable nature, such as plants, foodstuffs or provisions, and special goods such as live animals, are only rendered by the Company solely at the Customer's risk without any liability whatsoever to the company.

(c) The rates published herewith are for the conveyance to all parts of the world of goods consisting of ordinary merchandise; senders are responsible for the payment of any increase in rates freights premiums or other of increase in rates freight premiums or other charges which may be imposed after the commencement of the transit. Works of art and other goods or high value, goods out of proportion in bulk to their weight such as bicycles perambulators feathers, bamboo furniture or hollow glass, and special rates. Customers duties local taxes and charges also portorage and local delivery expenses are additional to the rates for carriage unless otherwise stated. All rates and charges when payable abroad are liable to the slightly increased.

(d) Unless a special agreement is made as to the rate of carriage, the Company shall have the option of charging by value weight or measurement.

34. If any legislation is compulsory 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 constructed as a surrender by the Company of any of its responsibilities or liabilities under such legislation and if any part of these Conditions be repugnant to such legislation to any extent such part shall as regards such business be overridden to that extent and no further

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

JURISDICTION AND LAW

35. These Conditions and any claims or dispute arising out of or in connection with the services of the Company shall be subject to Malaysian law and the exclusive jurisdiction of the Malaysian courts.

PART II: COMPANY AS AGENTS

SPECIAL LIABILITY AND INDEMNITY CONDITIONS

36. (a) To the extent that the Company acts as an agent, the Company does not make or purport to make any contract with the Customer for the carriage, storage or handling of the Goods not for any other physical service in relation to them and acts solely on behalf of the Customer in securing such services by establishing contracts

with third parties so that direct contractual relationships are established between the Customer and such third parties.

(b) The Company shall not be liable for the acts and omissions of such third parties referred in sub-clause (a) above.

(c) The Company shall not be responsible for any accident or for any act neglect or default nowsoever arising willful or otherwise on the part of its agents or those with whom it contracts in respect of goods to be forwarded, whether they are carriers by land, sea or air (whether shipowners lighterment canal railway or aircraft operators or others) or warehouse keepers or other persons. The Company shall not be responsible for any money paid or remitted by it on behalf of the senders to any persons in respect of the goods to be forwarded, whether for the purpose of paying the duties or charges in respect of the goods or otherwise. All the general and special exemptions stated in this condition shall apply although the particular rates or charges made by the Company to the senders or persons forwarding the goods may not be identical with the amounts paid by it to such agents contractors or other persons.

37.(a) The Company when acting as an agent has the authority of the Customer to enter into contracts on the Customer's behalf and to do such acts so as to bind the Customer by such contracts and acts in all respect notwithstanding any departure from the Customer's instructions.

(b) The Company only forwards goods subject to the contracts, terms, conditions and regulation of the various persons companies or authorities into whose possession the goods may pass.

(c) 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 37.

CHOICE OF RATES

38. Where there is a choice of rates according to the extent or degree of liability assumed by persons carrying, storing, handling the Goods, no declaration of value where optional will be made unless otherwise agreed in writing.

PART III: COMPANY AS PRINCIPAL

SPECIAL LIABILITY CONDITIONS

39. To the extent that 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 performances 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.

40. Notwithstanding other provisions in these Conditions, if it is proven that 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.

41. Notwithstanding other provisions provided in these Conditions, if it can be proved that the loss of or damage to the Goods occurred at sea or inland waterway and the provisions of clause 41 do not apply the Company's liability shall be limited to those set out in the Hague Rules and the Company shall be entitled to reply on all defenses, exemption or limitations, provided to carriers by the Hague Rules. Reference in the Hague Rules to carriage by sea shall be deemed to include reference to carriage by the inland waterways and the Hague Rules shall be construed accordingly.

42. Notwithstanding the provisions of clause 41, if the loss of or damage to the Goods occurred at sea or on inland waterways, and the Owner, Charterer or operator of the vessel establishes a limitation fund, the liability of the Company shall be limited to the proportion of the said limitation fund allocated to the Goods.

AIR CARRIAGE

43. If the Company acts as a principal in respect of a carriage of Goods by air the following notice is hereby given: If the Carriage involves an ultimate destination or stop in a country other than the country of departure, the Warsaw Convention may be applicable and the Convention governs and in most cases limits the liability of carriers in respect of loss or damage to cargo. Agreed stopping places are those places (other than the places of departure and destination) shown under requested routing and/or those places shown in carriers timetables as scheduled stopping places for the route. The address of the first carrier is the airport of departure.

BOTH TO BLAME COLLISION CLAUSE

44. The current Both-to-Blame Collision Clause as adopted the Baltic & International Maritime Council (BIMCO) is incorporated in and deemed to form part of these conditions. If the vessel comes into collision with another vessel as a result of the negligence of the other vessel and any act of negligence or default of the Master, Mariner, Pilot or the servants of the carrier against all loss or liability represents loss of or damage to or any claim whatsoever of the owner of the said goods paid or payable by carrying vessel or her Owner as part of his claim against the carrying vessel or carrier. The foregoing provisions shall also apply where the Owner, operator or those in charge of any vessels or objects other than or in addition to the colliding, vessels or objects are at fault in respect of a collision of contract.