

Application

1. These Terms and Conditions shall apply to any arrangement/contract entered into between the Company and the Customer in connection with any railway transport service by trains (carriage of Goods by rail), performed or undertaken by the Company at the Customer's request, and the additional Services as and when the Company considers essential at its sole discretion. If there is any conflict between "these Terms and Conditions" and "any terms and conditions in any quotation, advice, information, service, arrangement, "these Terms and Conditions" herein set out shall prevail. In addition to these Terms and Conditions, the General Terms and Conditions of the Company that are neither stipulated nor stipulated in detail herein shall apply to this rail consignment as long as they are not contrary to the Terms and Conditions herein set out, the Railway Transport Service Law (RTSL), and the Railway Transport Service Rules (RTSR), which may be amended.

Definitions

2. In these Terms and conditions, the following words have the meanings or shall be interpreted as stated below.

(a) Activity: The work performed by employees, equipment, technology or facility of the Company.

(b) Agreement: The agreement or contract for the provision of Railway Transport Services by the Company to the Customer of which these Terms and Conditions form part.

(c) Animal: It includes elephants, buffaloes, cows, mithuns, horses, donkeys, mules, pigs, sheep, goats herded by any person, and other animals, that may endanger a train.

(d) Bailment, Bailor, and Bailee: A "Bailment" is the delivery of Goods by one person to another for some purpose, upon a contract that they shall, when the purpose is accomplished, be returned or otherwise disposed of according to the directions of the person delivering them. The person, delivering the Goods, is called the "Bailor." The person to whom they are delivered is called the "Bailee."

(e) Carriage: Any activity performed or service provided by the Company for the Customer under this Rail Consignment Note.

(f) Central Supervisory Board: It means the Central Supervisory Board for railway transport service formed by the Union Government under the RTSL.

(g) Company: The Railway Company, the Carrier, Resources Group Logistics Company Limited, incorporated under the Myanmar Companies Act or the Special Company Act, 1950 to carry out railway transport service. The party to the "Transport Service Agreement for Container Train Operations" with Myanmar Railways.

(h) Customer: The person or party requesting the Services from the Company in accordance with these Terms and Conditions. In the Railway Transport Service Rules, 2018, the Customer is named as the Consignor, the person, who consigns the Goods to the Company for the transportation of Goods by train in the railway transport business, and the Consignee means the person who has the right to receive the Goods listed in the Rail Consignment Note.

(i) Dangerous Goods: Goods, which are officially classified as hazardous as well as Goods, which are or may become of a dangerous, inflammable, radioactive, noxious or damaging nature and whose storage, handling or transportation is, because of their dangerous or hazardous or noxious nature, subject to respective regulation under the International Convention for the Safety of Life at Sea 1974, as amended, International Maritime Dangerous Goods Code, as amended, IATA Dangerous Goods Regulations, as amended, Regulations concerning the International Carriage of Goods by Rail (RID), as amended, European Agreement

Concerning International Carriage of Dangerous Goods by Road (ADR), as amended, and/or other applicable laws. This term includes articles or substances capable of posing significant health, safety, or environmental risk, and that ordinarily require special attention, including packaging & labeling when stored or transported. Also referred to as Hazardous Goods or Hazardous Materials.

(j) Force majeure: Any circumstances which could not be reasonably controlled by the Party, resulting non-performance of the Party's obligations because of "externality" and which could not be more timely anticipated because of "unpredictability" and thus the negative consequences of the event could not be avoided by the Company because of "irresistibility". Such circumstances include any of the following but not limited to: (i) human interventions, war, hostility, public disturbance or acts of public enemy; official action, quarantine, epidemic, civil disturbance, sabotage, labour disruptions such as strike, protest and uprising, embargos, boycott, lockout or other form of industrial action or work stoppages or individual actions; restraints or prohibitions by or acts of governments or public agencies/ organisations; and failure or interruption of public or private transportation or other utilities, interference with communications, lack of transportation, labour and/or storage accommodation and/or any other similar causes; (ii) acts of God and natural disasters, storm, typhoon, cyclone, hurricane, tornado, sand storm, unexpected adverse weather, marine disaster, a tsunami, fog, frost, freezing, ice, heat, lightning, flood, high and low tide, earthquake, eruption of a volcano, pandemic and/or any other similar acts of nature; (iii) fire, explosions, nuclear incident, water used against fires, smoke, burglary, theft, loss, subsidence, collapse, water, seepage, damp odour, stench, worms and rodents, damage through rats, mice, insects and other creatures; (iv) natural properties of the Goods, changes in quality, spontaneous deterioration, self-generated heat, combustion, drying, mould, yeasts, leaks, rot and mildew, rust and sweating, breakage of glass, whickered bottles and flasks, cast-iron and other brittle articles, inadequate packing and/or any other similar grounds.

(k) Goods: All kinds of freights and animals that are the subject of the Services.

(l) Myanma Railways: The State-owned enterprise carrying out railway transport service by trains.

(m) Railway Company: The Company incorporated under the Myanmar Companies Act or the Special Company Act, 1950 to carry out railway transport service. Myanma Railways is not included in this expression.

(n) Railway Organization: Any Railway Company, which has obtained a licence to carry out railway transport service and Myanma Railways.

(o) Railway transport service: Transport of Goods to the whole or a part of the country or aboard by train for commercial purposes, and other related services.

(p) Rolling stock: It means engines, locomotive engines, tenders, carriages, wagons, trucks, and different types of trolleys.

(q) Train: An engine connected with carriages or not, or a motorized vehicle with a trailer or without a trailer like rolling stock, which cannot be easily removed from rails.

(r) Transport: The transport of Goods by rolling stock.

Transport of Goods

3. **(a)** The Customer shall not consign the Goods restricted under any existing law, Dangerous Goods that are not in conformity with the stipulations, offensive Goods for the public, and Goods restricted by the Government Departments, Government Organizations, or Local

Administrative Authorities.

(b) The Railway Organization may collect the railway freight charge, warehouse fee, service charge, demurrage for Goods and carriage, and the other costs in accordance with the stipulations.

Transport Responsibilities of Railway Organisation

4. Subject to other provisions of the Railway Transport Service Law 2016 and Sections 151, 152, and 161 of the existing Contract Act, the Railway

Organization shall perform their duties as Bailees in respect of loss and deterioration of Goods and loss, injury and death of animals consigned to them.

(a) Section 151 of the existing Contract Act. In all cases of Bailment, the Bailee is bound to take as much care of the Goods bailed to him as a man of ordinary prudence would, under similar circumstances, take care of his own

Goods of the same bulk, quality, and value as the Goods bailed.

(b) Section 152 of the existing Contract Act. The Bailee, in the absence of any special contract, is not responsible for the loss, destruction, or deterioration of the thing bailed if he has taken the amount of care of it described in Section 151.

(c) Section 161 of the existing Contract Act. If, by the default of the bailee, the Goods are not returned, delivered, or tendered at the proper time, he is responsible to the Bailor for any loss, destruction, or deterioration of the Goods from that time.

5. The compensation may be claimed with sufficient evidence for the loss, damage and delay of Goods and injury and death of animals consigned to the Railway Organization.

6. The Railway Organization shall have no responsibility to pay compensation for the loss, damage, or deterioration of Goods if the kinds and lists of Goods are mentioned incorrectly.

7. Notwithstanding anything contained in the provisions of Chapter XV of the Railway Transport Service Law, the Railway Organization shall have no responsibility for the loss, damage, or delay in the delivery of Goods during the transport of Goods if the Railway Organization can prove that one

or more of the following situations:

(a) act or negligence of consignors, consignees or their agents or representatives;

(b) incompleteness or defect in packaging, labeling, or numbering Goods;

(c) keeping, loading, unloading, or storage of Goods negligently by

consignors, consignees, their agents or representatives;

(d) perishable Goods, natural defect or unforeseen defect in Goods;

(e) workers strike, closure of workplace, stoppage, and obstruction not to work wholly or partly;

(f) force majeure including natural disasters.

8. In relation to the consignment of the animal to be transported by train to the relevant Myanma Railways and the Railway Company:

(a) the value of the animal shall be clearly stated at the time of request to transport by train, and failing which, Myanma Railways and the Railway

Company shall pay compensation for the loss, injury, and death of these animals not exceeding the specified values declared for each type of animal from time to time; and

(b) if more than the reasonable value was notified by the Customer and thereby the responsibility for the higher value was increased, Myanmar

Railways and the Railway Company may charge a fair percentage of the value of such notification against the Customer.

9. In all cases where compensation is claimed for loss, injury, and death of animals consigned to Myanmar Railways and the Railway Company for the transportation by train, it is the responsibility of the claimant to provide sufficient evidence of the value of the injury and organs lost to the animals.

10. Myanmar Railways and the Railway Company shall not be liable for any

loss or damage caused by the deterioration or delay in delivery of the following Goods:

(a) Goods that have been provided with a deliberately false list of Goods;

(b) Goods, subject to any conditions in Section 69 of the Railway Transport Law, which is set out herein as Condition 7.

11. Except for the Goods for which there is no obligation to indemnify under the Conditions 10, 18, and 19, Myanmar Railways and the Railway Company are liable for compensation for the damages caused by loss, damage, or delay in delivery of Goods, from the time they receive the Goods until the Goods are handed over at the end of the journey.

12. (a) When the parcels or packages, containing valuable items that shall be legally notified and insured, are consigned to be transported by train to the Myanmar Railways and Railway Company, and the items are worth more than MMK 100,000, Myanmar Railways and the Railway Company shall not be responsible for compensation for loss, damage, and deterioration if the Customer has failed to clearly notify the name and value of the items inside, or if he has failed to pay the increased insurance fee due to the increased responsibility for the value of more than MMK 100,000 to Myanmar Railways and the Railway Company.

(b) Myanmar Railways and Railway Company shall set the increased rate of insurance fee for the Goods valued at more than MMK 100,000, in addition to the freight charges due to increased responsibility, with the approval of the Central Supervisory Board.

13. Myanmar Railways and Railway Company:

(a) may set the maximum compensation value in the case of loss, damage, or deterioration of a parcel or package containing valuable Goods, with the approval of the Central Supervisory Board;

(b) shall pay the compensation according to the value stated in the notification only, if there is loss, damage, or deterioration of a parcel or package containing valuable Goods and the compensation is to be paid under the Condition 11, provided that the value disclosed and notified does not exceed the maximum value to be compensated as determined under the paragraph (a) of this Condition; and

(c) except for the case of loss, damage, and deterioration of valuable Goods, the liability for damages due to delay in issuing the Goods shall not exceed an amount equal to the freight charges.

14. It is the responsibility of the claimant to provide proof that the value to be paid under Condition 12 is the true value of the parcel or package that has been notified and consigned.

15. The transportation of the consigned package, containing the valuable Goods that must be declared and insured, shall only be performed by the Myanmar Railways and the Railway Company when the staff of the Railway Organization inspected and satisfied that it is correct.

Administrative Prohibition and Penalty

16. No Customer shall state the weight and item of the freight incorrectly with the purpose of paying the freight charge less than the actual charge.

17. The Myanmar Railways may impose a fine three times of railway freight charge as administrative penalties against any person, who violates the prohibition stated in the above Condition 16.

Exemptions from Liability

18. The Company shall be exempted from any liability for loss or damage to the Goods or the Customer or any third party because of "force majeure", "any incorrect or incomplete, or ambiguous information in connection with the Goods provided by the Customer to the Company", "negligence or failure of the Customer to arrange proper packing, marking, handling, loading, stowage, or unloading of the Goods" and "latent defects or normal wear and tear of the

Goods" in addition to the exemptions, granted to the Company under any other Conditions herein.

Exclusion of Liability

19. (a) The Company shall in no event be liable to the Customer or any party claiming through the Customer whether in contract, tort (including negligence or breach of statutory duty) or otherwise, for any loss, damages, cost, expenses, injury, death, delay in delivery, non-delivery or misdelivery, deviation in transportation or misdirection of the Goods whatsoever and howsoever caused except as may be caused by deliberate act, gross negligence or wilful default on the part of the Company, its employees or agents.

(b) In addition to the paragraph (a) of this Condition, the Company shall in no event be liable to the Customer or any party claiming through the Customer whether in contract, tort (including negligence or breach of statutory duty) or otherwise for any loss of damage arising from:

(i) the theft or burglary; (ii) the non-compliance or inaccurate compliance with the Customer's instructions or otherwise unless it is proven that such loss or damage caused by the deliberate act, gross negligence or wilful default on the part of the Company, its employees or agents whilst the Goods were in the custody and under the full control of the Company; (iii) the errors in particulars of freight charges, duties and expenses notified to the Company by third persons including the errors in any warrants, receipts, delivery orders, confirmations or any other similar documents; (iv) the refusal of the carrier to sign or acknowledge the details of Goods; (v) the Customer's failure to arrange proper packing of the Goods or sufficient protection to the Goods for the handling and carriage; and (vi) the following causes in alphabetical order regardless of their origin: adherence or coverings; bending; breakage; chaffing; changes in quality, weight or character; climate effects; contact with other Goods or fuel; dampness; decay; discoloration; distortion; drainage; drying out; dust; errors in or insufficiency or absence of marks, numbers, address or description; evaporation; fermenting; fire or explosion of the Goods whether received with or without disclosure of its hazardous nature; foul-smelling; freezing; heat or heating; hook holes; insects, rats and other vermin; leakage; melting; mildew; mice; mould; obliteration; powdering; pressing or bursting of packages; rusting; shrinkage; soiling; splitting; staining; sweating; tainting; and wastage; and (vii) any situation which could not have been avoided by the reasonable care taken by the Company.

(c) In no case shall the Company be liable for any lost profit, income or savings, wasted expenditure, liquidated damages payable by or on behalf of the Customer, or indirect or consequential loss.

Limitation of Liability

20. (a) Subject to the Condition 19 above, the Company's liability to the Customer whether in contract, tort (including negligence or breach of statutory duty) or otherwise, for any and all loss, cost, expenses, claims, damages, injury or death whatsoever and howsoever caused arising from any breach, failure or default of the Company in performing its obligations or duties to the Customer shall be as follows:

(i) where in performing Rail Transportation Work and in relation to the warrants, loss or damage sustained is in respect of the consignment, whether in whole or in part, the aggregate amount of total damages recoverable shall be limited to MMK 5,000,000 per event or series of events resulting from one and the same cause, or ten times of the quoted transportation tariff or the net value of the consignment at the time the Company took possession of the same, whichever is lesser;

(b) notwithstanding anything contained in the above paragraph (a) of this Condition, the Company's liability to the Customer whether in contract, tort (including negligence or breach of statutory duty) or otherwise, for any and all loss, cost, expenses, claims, damages, injury or death arising from any breach, failure or default of the Company in performing its obligations or duties to the Customer hereunder shall in any event not exceed a maximum amount of MMK 5,000,000 for each occurrence or series of occurrences with the same cause.

Customer's Warranties

21. The Customer, who enters into any transactions or business with the Company, warrants that:

(a) the Customer acknowledges and agrees to provide the Company with all required and/or relevant information within a reasonable time stipulated by

Company enabling the Company to plan and perform the Services in a timely, effective and efficient manner. If such information is not provided within the agreed and stipulated time, the Company is entitled to any additional charges due to the delay and its consequences;

(b) the Customer declares and agrees to provide the Company with all relevant information that are required under any applicable law for the purpose of complying with their obligation in relation to the VGM and to indemnify the Company and/or its employees, agents or subcontractors for any claims, losses, expenses, damages, liabilities, delays or costs arising as the result of any inaccurate, incomplete or incorrect provision of information relating to the VGM no matter whether the Customer has taken reasonable care or not in providing the same to the Company.

(c) the information provided by the Customer to the Company are true and accurate and shall continue to be true and accurate until such time the Company no longer requires such information for the performance of any Services;

(d) the Customer shall not deliver to the Company any consignment containing dangerous, germanous, infested, contaminated or condemned Goods unless he has given to the Company in writing full details of any particular risk relating to the Goods including their possible deterioration or damage or their dangerous or special nature or likelihood to contaminate or otherwise affect other Goods, property, persons and/or the environment and has obtained the written agreement of the Company to the delivery of such consignment at the Customer's own risk. The Customer shall be liable for the loss, damage, contamination, soiling, detention or demurrage during the term of the provision of Services of property of the Company or any Person or conveyance caused by the Customer or any Person acting on behalf of Customer or for which the Customer is otherwise responsible;

(e) except where the Company is instructed in writing to pack the Goods, all Goods to be delivered by the Customer to the Company shall have been securely, properly and sufficiently packed, labelled and/or prepared with the appropriate Package or Cargo Unit by the Customer. If there is any failure of the Customer to do so, the Company has no liability for any loss of or damage to the Goods, no matter when or where or how such loss or damage is caused;

(f) if the Goods delivered by or on behalf of the Customer are already stored in or on a transport unit such as container, flat rack, trailer, tilt, railway, wagon, tank, or any other similar unit, the Customer ensures that the transportation unit is in good condition suitable and ready for the intended carriage or storage or handling for the purpose of the Services and the Goods have been properly, safely and competently packed or lashed or loaded in or on transport unit;

(g) in the absence of written notice to the contrary given to the Company at the time of delivery of the Goods, all Goods shall be fit and suitable for the carriage, storage, packing, unpacking and other handling in accordance with, pursuant or related to the Services; and

(h) the consignee or other designated person for taking delivery of the Goods shall pay all necessary fees, charges, taxes and duties and shall take delivery of the Goods upon their arrival at the Delivery Address within a stipulated or reasonable time without any delay by complying with the required formalities and procedures.

Company's Rights

22. (a) **Changes to Terms and Conditions**

The Company reserves the rights to delete or amend any of the Terms and Conditions herein and/or append any other terms and conditions as integral part of these Terms and Conditions, from time to time wherein such changes shall be binding on the Customer.

(b) **Engagement of Subcontractors and Agents**

(i) The Company reserves the rights and is authorised by the Customer to engage any subcontractors or agents in the performance of its any Services in relation to the Goods, partly or entirely at any time and to agree with any fees payable to them by the Company that may be lower than the Fees payable by the Customer to the Company for the same Services.

(ii) Such subcontractors and/or agents engaged by the Company shall be entitled to enforce the rights and benefits of the Company under these Conditions.

(c) **Additional Measures**

(i) The Company and its subcontractors or agents shall be entitled at their sole discretion, but not obliged, to take any immediate additional measures including, but not limited to, packing, unpacking, repacking, restuffing, inspection, shifting, destruction or disposal in relation to the Goods at any time that may make a departure from the instructions of the Customer if they are of the opinion that failing to take any such additional measures may lead to: loss or any other Goods, storage place, equipment, carrier, environment or cause harm or injury to persons; or affect the protection of the Customer's interests.

All costs and risks resulting from or in connection with any additional measures taken by them pursuant to this Condition shall be borne solely by the Customer.

(ii) The Company will keep the Customer notified of any additional measures taken in accordance with this Condition at its earliest opportunity, but the Company's failure to do so shall not grant the Customer any rights to claim against the Company.

(iii) **Compliance with Authorities' Recommendations, Instructions,**

or Orders

The Company and its subcontractors or agents shall be entitled to comply with any recommendations, instructions or orders in relation to the Goods as imposed by any relevant Authorities at any time that may be of a conflict with the requirements of the Customer or of a restriction to the Company to continue its Services. In such case, the Company has rights to terminate its Services and the Customer shall bear all costs in addition to the Fees payable to the Company. Notwithstanding the above, the Customer shall deal directly with the Authorities forthwith.

Dangerous Goods

23. Notwithstanding that the Company may have accepted the Dangerous Goods under an arrangement previously agreed between the Company and the Customer in writing subject to the pre-approval of Myanma Railways, the Customer agrees that the Dangerous Goods may be abandoned, destroyed, or rendered innocuous or otherwise disposed of at any time or place by the Company without notice as well as without compensation to the Customer and without prejudice to the Company's right to Fees and at the Customer's risk and expense on account of the risk to other Goods, property, life, health or environment or such Goods are found to be contraband or prohibited by law at any place during the transportation, without any liability to the Company or any other person in whose custody or control they may be at the relevant time.

Value of the Goods

24. (a) The Customer shall declare the valuable items contained in any parcels or packages worth more than MMK 100,000.

(b) In case, if the actual value of the Goods exceeds the value of the Goods as declared by the Customer in writing, the value shall be considered as the declared value and thereby the Company's liability, if any, against partial loss or damage of the Goods, shall be adjusted on a pro-rata basis of the declared value.

Insurance

25. The Customer shall maintain a valid insurance cover for valuable items worth more than MMK 100,000. Insofar as the Company agrees with the Customer to arrange insurance, the Company may act solely as Agents for and on behalf of the Customer, and the Customer shall be charged accordingly.

26. Notice of Claim and Time Bar**(a) Notice**

(i) Unless notice of loss of or damage to the Goods, specifying the general nature of such loss or damage, is given in writing to the Company by Customer or the person entitled to receive the Goods when they are handed over to him, such handing over prima facie evidence of the delivery of the Goods in good order and condition. Where such loss or damage is not apparent, the same prima facie effect shall apply if notice in writing is not given within three (3) consecutive days after the day when the Goods were handed over to the Customer or the person entitled to receive them. (ii) With respect to all other loss or damage, any claim by the Customer against the Company arising in respect of any service provided for the Customer or which the Company has undertaken to provide shall be made in writing and notified to the Company within seven (7) consecutive days of the date upon which the Customer became or should have become aware of any event or occurrence alleged to give rise to such claim. (iii) Any claim not made and notified as stipulated in the above subparagraphs (i) and (ii) shall be waived and absolutely barred and thus the Company shall be discharged from all liability.

(b) Time Bar

(i) The Company shall, unless otherwise expressly agreed between the Customer and the Company in writing, be discharged from all liability under this Condition unless suit is brought within 9 months after the delivery of the Goods, or the date when the Goods should have been delivered, or the date when failure to deliver the Goods would give the Customer the right to treat the Goods as lost. (ii) With respect to other loss than loss of or damage to the Goods the 9 months period should be counted from the time when the failure of the Company giving right to the claim occurred.

Severability

27. In any event, if any part of these Conditions or any application thereof is construed or held to be invalid, illegal or unenforceable under any enactment or rule of law or by order, decree or judgment of a competent court or tribunal in any competent jurisdiction, such part or any application thereof shall only be severable and it shall not affect the validity, legality or enforceability of the remaining parts of these Conditions which shall remain in full force and effect.

Law and Jurisdiction

28.(a) The agreement or contract, these Terms and Conditions and any dispute or claim arising out of or in connection with it or its subject matter, shall be governed by, and construed in accordance with, the law of the Republic of the Union of Myanmar.

(b) The parties hereto irrevocably agree that the courts of the Republic of the Union of Myanmar shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with the agreement or contract or its subject matter.