

# GENERAL TERMS AND CONDITIONS OF

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RESOURCES GROUP LOGISTICS  
COMPANY LIMITED AND

*ITS SUBSIDIARIES*

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# GENERAL TERMS AND CONDITIONS

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## Part A - General

### 1. Application

- (1) These Terms and Conditions herein set out shall be applicable to any agreement or contract entered into between the Company and the Customer in connection with any Services performed or undertaken by the Company at the request of the Customer.
- (2) All and any business undertaken, including any quotation, advice, information, service or arrangement provided by the Company shall transact subject to these Terms and Conditions.
- (3) Each Condition of these Terms and Conditions shall be deemed to be incorporated in and to be a Condition of any such quotation, advice, information, service, arrangement, agreement and contract between the Company and the Customer.
- (4) In the event of any inconsistency or discrepancy between the various documents governing the relationship between the Company and the Customer, the following order of precedence shall apply:

- i) If there is any discrepancy between "these Terms and Conditions herein set out" and "any terms and conditions in any quotation, advice, information, service, and arrangement," **these Terms and Conditions herein set out** shall prevail.
  - ii) If there is any discrepancy between "these Terms and Conditions herein set out" and "any specific terms and conditions in any Agreement, Contract, Warehouse Receipt, Rail Consignment Note, Air Waybill, Road Waybill, Bill of Lading (negotiation or non-negotiation) or any other similar document", **these Terms and Conditions herein set out** shall prevail.
- (5) In any case or circumstance, no person on behalf of the Company is authorized to alter or vary these Terms and Conditions.

## 2. General Definitions and Interpretations

- (1) In these Terms and conditions, the following words have the meanings or shall be interpreted as stated below except where the context otherwise requires:

<b>“Activity”</b>	means work performed by employee, equipment, technology or facility of the Company.
<b>“Agreement”</b>	means the agreement or contract for the provision of Services by the Company to the Customer of which these Terms and Conditions form part.
<b>“Business Day”</b>	means any weekday (Monday to Friday) excluding public holidays in the Republic of Union of Myanmar.
<b>“Cargo Unit”</b>	means a physical unit or a piece of Goods not shipped in the parcel or package.

- “Charges”** include fees, charges, interest and any other sums payable to the Company by the Customer in relation to any information, recommendation, advice, activity and/or Service provided by the Company to the Customer.
- “Company”** means Resources Group Logistics Company Limited, registered in the Republic of the Union of Myanmar and its subsidiaries agreeing to provide the Service and/or items, such as information or advice, in accordance with these respective Terms and Conditions to the Customer.
- “Conditions”** means these Terms and Conditions reflected herein.
- “Confidential Information”** includes any arrangements, business affairs or plans, documents, expertise, handbooks, manuals, marketing techniques or activities, materials, procedures, systems, technologies, worksheets, and/or information, which belongs to and under the custody of a party keeping in a strictly confidential nature. It will not normally be disclosed to the public, but it may be released by such party to another by any means, either in writing or through verbal communication during a business discussion or meeting.
- “Container”** includes any container, trailer, transportable tank, flat or any other similar article used to consolidate Goods and any equipment thereof or connected thereto.
- “Contract Documents”** include Warehouse Agreement, Warehouse Receipt, Logistics Services Agreement, Forwarder Cargo Receipt, Forwarder Waybill, Road Waybill, Rail Consignment Note, Air Waybill, Bill of Lading (negotiable or non-negotiable) and Combined Transport Bill of Lading.

**“Conveyance”**

includes any parcel, carton, container, flexi-tank, trailer, transportable tank, flat rack, lift van, skid, pallet, platform or any similar article for transportation and/or storage used to carry or consolidate Goods and any equipment associated or connected thereto.

**“Customer”**

means the person or party requesting or using the Services and/or items, such as information or advice, from the Company in accordance with the Terms and Conditions stipulated in quotation and/or agreement or contract. One of the following persons or parties may be specified as a Customer:

- (a) a party, who signs a contract with the Company;
- (b) a holder of a warrant; and/or
- (c) any party, who has ownership of and/or title to the Goods stored with the Company.

**“Dangerous Goods”**

means Goods, which are officially classified in the International Maritime Dangerous Goods (IMDG) Code, as amended, as dangerous. The packing, marking and labelling, documentation, stowage and carriage of such Goods shall be carried out in accordance with the relevant provisions of the IMDG Code because of their specified Classes (Explosives, Gases, Flammable liquids, Flammable solids, Oxidizing substances, Toxic and infectious substances, Radio Active materials, Corrosive substance, and Miscellaneous dangerous substances and articles, and environmentally hazardous substances including Marine Pollutant) and nature.

**“Delivery Address”**

means the delivery bay or the applicable area of an address designated by the Customer as expressed in the Consignment Note, except a post office box, to which the Goods shall be delivered.

**“Designated Address”**

means the collection bay or the practicable area of an address of storage designated by the Customer as expressed in the Consignment Note and/or the Warehouse Warrant, except a post office box, from which the Goods shall be collected.

**“Environment”**

means the physical factors in the human environment, including land, water, atmosphere, climate, sound, odour, taste, the biological factors of various animals and plants and historical, cultural, social and aesthetic factors.

**“Force Majeure”**

means any circumstances, which could not be reasonably controlled by a party (the Company or the Customer), because of:

“Externality”: the circumstances, which lead to the non-performance of the obligation, were beyond the control of the party;

“Unpredictability”: the party is unable to anticipate the occurrence of the event;

“Irresistibility”: the consequences of the event could not be avoided by the party.

Such circumstances include any of the following but not limited to:

(a) human interventions, war, hostility, public disturbance or acts of public enemy; official action, civil disturbance, sabotage, labour disruptions (strike, protest and uprising), 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, failure or interruption of public or private transportation or other utilities, interference with communications, lack of transportation, labour and/or accommodation, boycott, embargos, epidemic, quarantine, and/ or any other similar causes.

(b) Act of God and natural disasters, such as the destruction of life and property, livelihood, infrastructures, safety, education and health of the public or of the environment due to natural or man-made accidents or negligence such as fire, landslides, storms, floods, thunderbolts, droughts, earthquakes, tsunamis, avalanches, heat or cold waves, volcanic eruptions, erosion of banks and shores and maritime accidents; or damage to crops caused by pests or plant diseases, starvation and outbreak of contagious diseases among humans or animals; or violence and armed insurgencies; or dangers caused by industrial, chemical or nuclear accidents, oil spills or leakage of natural gas, including any other danger specified as a natural disaster by the National Natural Disaster Management Committee of the Republic of the Union of Myanmar.

- “Freight Forwarder”** means the company, which concludes an agreement or a contract of Freight Forwarding Services with a Customer.
- “Freight Forwarding Services”** mean Services of any kind relating to the carriage, consolidation, storage, handling, packing or distribution of the Goods as well as ancillary and advisory services in connection therewith, including but not limited to customs and fiscal matters, declaring the Goods for official purposes, procuring insurance of the Goods and collecting or procuring payment or documents relating to the Goods provided by the Company for the Customer
- “Goods”** mean the Goods and/or materials which are the subject of the Services.
- “Hague Rules”** mean the provisions of the International Convention for the Unification of Certain Rules relating to Bills of Lading, signed at Brussels on 25th August 1924.
- “Hague-Visby Rules”** mean the Hague Rules as amended by the Brussels Protocol, signed at Brussels on 23rd February 1968.
- “Hazardous Substance”** means a substance or object which may affect health including explosive substance, substance which may be created and used as a biological weapon, substance which may be used as a nuclear weapon, inflammable substance, oxidizing substance, toxic substance, pathogenic substance, radioactive substance, genetic transforming substance, corrosive substance, irritating objects, whether chemical or not, which can be harmful to human being, animal, plant, property or environment.
- “Indemnify”** means indemnify, defend and hold harmless.

**“Insolvency Event”**

includes any event when:

- (a) a receiver, administrative receiver, administrator, manager or official receiver is appointed over the Customer's affairs;
- (b) the Customer goes into liquidation, unless for the purpose of a solvent reconstruction (rehabilitation) or amalgamation/merger;
- (c) any attachment, distress, execution or sequestration is levied against any part of the Customer's assets as the debt owing to its creditor is not paid; and
- (d) it is specified as insolvency in accordance with the Insolvency Law of the Republic of the Union of Myanmar.

**“Instructions”**

mean a statement of Customer's specific requirements, including but not limited to, the instructions specified on the front of the Shipper's Instruction form and/or on any one of the Contract Documents.

**“Interested Party”**

means the Customer and/or anyone with an interest in the Goods; any obligation of the Interested Party is borne jointly and severally.

**“In Writing”**

includes telegram, telex, facsimile, email, or any recording by electronic means.

**“Loss”**

includes (without limitation) loss (including theft), destruction, damage, unavailability, contamination, deterioration, delay, non-delivery, mis-delivery, unauthorised delivery, non-compliance with instructions or obligations, incorrect advice or information, loss or corruption of data, interference with or disruption of computer systems, breach of duty; and any event giving rise to any liability of an Interested Party to any other person or authority.

**“Means of Transport”**

mean constructions designated for the transport of Goods, and/or people passenger regardless of whether such constructions are self-propelled or not.

- “Merchant”** includes the owner, shipper and consignee of the Goods, any other Person who is or may become interested in the Goods and anyone acting on their behalf.
- “Package”** means the unit of the Goods stated on the face of the Warehouse Agreement, Warehouse Receipt, Logistics Services Agreement, Forwarder Cargo Receipt, Forwarder Way-bill, Road Way-bill, Rail Consignment Note, Air Way-bill, Bill of Lading (whether negotiable or non-negotiable) and Combined Transport Bill of Lading in whatsoever form for the particular Service.
- “Pollutant”** means solid, liquid, or vapour which directly or indirectly alters the quality so as to affect beneficial use of any segment or element of the environment or is hazardous or potentially hazardous to health or causes pollution.
- “Pollution”** means any direct or indirect alteration, effect of the physical, thermal, chemical or biological properties of any part of the environment including land, water and atmosphere by discharging, emitting or depositing environmental hazardous substances, pollutants or wastes so as to affect beneficial use of environment, or to affect public health, safety or welfare, or animals and plants or to contravene any condition, limitation or prohibition contained in the prior permission issued under this Law.
- “Prima Facie”** means “based on the first impression”; “accepted as correct until proved otherwise”.
- “Relevant Authority”** includes any customs authority, customs inspection stations, harbour and port authorities, Ministry of Transport and Communications, any other relevant Ministries and any other authorities having legal jurisdiction over any element of the Carriage and/or the Goods, in the Republic of the Union of Myanmar.
- “Services”** means all services performed by the Company at the request of the Customer including, but not limited to, Freight Forwarding Work, Warehousing Work or any other Works.

- “Special Goods”** includes any perishable, chilled, frozen, fragile or odd size Goods, and other Goods or articles which require special care or handling or storage.
- “Storage”** includes care, custody, control, storage, consolidation process, distribution process, inventory management, loading and unloading process and other Services provided to the Customer in relation to the Goods stored and handled by the Company.
- “Storage Facility”** means any of the storage facilities which the Company uses.
- “Subcontractor”** means a party (including his respective employees and agents), directly or indirectly engaged at the behest of the Company to perform some or all of the Company's obligations.
- “Transportation Company”** means any Person or Party or Subcontractor who owns or manages or charters or operates the ship, truck, railway, aircraft or any conveyance of transport directly or indirectly engaged by the Company for the Carriage of the Goods.
- VGM (Verified Gross Mass)** means Verified Gross Mass as stated in the International Convention for the Safety of Life at Sea 1974, as amended.
- Warehouse Receipt** A non-transferable and non-negotiable instrument issued by the Company, confirming the receipt of the Goods by the Company from the Customer or its agents, described in its heading as a receipt.
- Warehousing Work** includes the storage, distribution, delivery or holding in custody of Goods, the other related works and the issuance of warehouse receipt and delivery order in respect of such Goods.
- Warehouse Warrant** means all kinds of storage receipt issued by the Company to the Customer.
- Warrant** means a stamped, numbered and legally signed receipt, described in its heading as a warrant in which it is certified that the holder is entitled to receive a specific quantity of Goods of a specific kind.

- Warrant Holder** means a person who makes himself known as such to the Company by producing the Warrant.
- 2) All references to a statutory provision include references, such as any statutory, amendment, consolidation, or re-enactment of it and all rules, regulations, orders, notifications, or directives made pursuant to it.
  - 3) Words denoting the singular include the plural and vice versa. Words denoting any gender include all genders. Words denoting persons include corporations, partnerships, other unincorporated bodies and all other legal entities and vice versa.
  - 4) The Condition headings are inserted for ease of reference only and do not affect their construction.
  - 5) All representations, warranties, undertakings, agreements, covenants, obligations, liabilities, and indemnities expressed in these Conditions or otherwise implied to be made, given or assumed by the Customer shall be deemed to be made, given or assumed by the Customer.
  - 6) The word "**include**" shall be construed to mean "include, without limitation" and the word "**including**" shall be construed accordingly.

## Part B – Customer

### 3. Warranty of Authority

- 1) In entering into any transaction or business with the Company, the Customer warrants that he is:
  - (a) either the owner or authorised agent of the owner of the Goods to which the contract relates, and if the consignment or any part thereof is not the Customer's own unencumbered property, he shall be the agent of such an owner or another interested party who warrants that he has the authority of all people owning or having an interest in the consignment or any part thereof, to enter into the contract, and binds him together with those people to these Conditions;
  - (b) authorised to accept (and is accepting) these Conditions not only for himself but also as agent for and on behalf of all other persons who are or may thereafter become interested party or Merchant; and
  - (c) not contracting or dealing as a consumer any statutory or other definition of whatsoever nature to the contrary.
- 2) The Customer shall indemnify the Company against any loss, damage or claims made upon the Company by virtue of any want of authority of the Customer to enter into any contract with the Company on behalf of any party having an interest in the Goods or any part thereof.
- 3) When the Customer acts as the agent of the Merchant, the Customer also accepts personal liability to the Company, but without prejudice to any of the rights or remedies of the Company against the Merchant, and so that in respect of such transaction or business the Company is entitled to enforce its rights or remedies, including but without limiting the rights to recover any sum payable to the Company, against the Customer and the Merchant jointly and severally.

## 4. Customer's Warranties

The Customer, who enters into any transaction 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 the 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 shall have 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, 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.

## **5. Customer's Indemnities**

- 1) The Customer shall, upon first written demand, defend, indemnify and hold harmless the Company from and against all and any losses, liabilities, fines, penalties, enforcement actions,

obligations, damages, interest, costs, expenses and claims of whatsoever nature and howsoever arising suffered or incurred by the Company and its employees, agents and subcontractors suffered or incurred directly or indirectly from or in connection with:

- a. the collection, carriage, storage and/or delivery of consignment which wholly or partly consists of dangerous, germanous, infested, contaminated or condemned Goods and any product liabilities relating to the nature of the Goods unless caused by the Company's negligence or wilful misconduct of the Company; or
  - b. any defects in the Goods and/or packing which have not been notified to the Company at the time of delivery to the Company; or
  - c. any consequences arising out from the Customer's controlled actions, or recalls or retrievals of the Goods; or
  - d. a breach of warranty or obligation by the Customer, and/or violations of any applicable rules or regulations or laws including but not limited to those relating to the protection of the environment or public health, and/or fraudulent or criminal act of the Customer; or
  - e. the Customer's instructions or implementation thereof, or inaccurate, incomplete, obscure, ambiguous and inadequate documents, information and/or instructions provided by the Customer, or delay on the part of the Customer in furnishing the relevant documents and instructions; or
  - f. negligent or wilful acts, default or omission on the part of the Customer, its employees, agents or subcontractors.
- 2) The Customer shall indemnify and hold harmless the Company for all third party claims relating to any damage caused as a result of the Services performed by the Company, save where such damage is caused as a result of an act or omission on the part of the Company, done either with the intent to cause that damage or recklessly and with the knowledge that such damage would probably result therefrom.

- 3) The Customer shall indemnify and hold harmless the Company against all claims, liabilities, losses, damages, costs and expenses arising out of any other person relying on advice or information in whatsoever form that is given to the Customer only by the Company.
  
- 4) The Customer shall indemnify and hold harmless the Company from any claim, loss or damage or expenses whatsoever and howsoever arising out of or in connection with the release of the Goods to the Warrant Holder or any other person who appears to the Company to be entitled to the Goods.
  
- 5) The Customer shall indemnify and hold harmless the Company from all costs and expenses incurred by the Company (including all legal costs calculated on an indemnity basis) in the event the Company is required to take any steps (including legal proceedings) against the Customer to recover any monies which are due and owing.
  
- 6) The Customer undertakes that no claim shall be made against any employee, agent, or subcontractor of the Company that imposes or attempts to impose on any of them any liability whatsoever in connection with the Goods or any Services provided or to be provided by the Company. If any such claim should yet be made, the Customer shall indemnify the Company against all consequences thereof upon first written demand. Without prejudice to the foregoing, every such employee, agent or subcontractor shall have the benefit of all Conditions herein set out, as if such Conditions were expressly for their benefit. In entering into whatsoever agreement for the purpose of the Services, the Company, to the extent of those Conditions, does so not only on its own behalf, but as agent and trustee for such employee, subcontractor and agent.
  
- 7) The Customer shall further indemnify and hold harmless the Company from and against:
  - (a) all and any losses, damages, costs, expenses and claims on account of any injury to or death of any person or damage to property caused by or resulting from any acts, whether such acts were

negligent or otherwise, on the part of the Customer, its employees, agents or contractors in relation to any of the Services; and

- (b) any fines or expenses incurred by the Company in its performance of the Services under the contract. any fines, loss, damage or expense incurred by the Company in its performance of the Services or resulting from the Company's performance of its obligations owed under any contract between the Company and the Customer.

## **6. Value of the Goods**

- 1) The Company has no obligation to declare the value of any Customer's Goods for the purposes of the compliance with any rules, regulations, laws, conventions or contracts or any other purposes unless the written instructions of the Customer are accepted by the Company in writing.
- 2) If the Customer fails to declare the value of its Goods in writing, the Company, at its absolute discretion, may decide it as of no value.
- 3) 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.

## **7. Goods in Different Categories**

### **1) Excluded Goods**

- (a) The Company shall not accept or deal with the Excluded Goods which comprise:
- (i) firearms including part of any firearms, ammunition and/or detonators;

- (ii) Illegal or contraband materials, items or substances, or other items the storage or transportation or which in accordance with the terms hereof would be deemed in violation of any applicable law, rule or regulation;
  - (iii) any written, printed or pictorial matter which is obscene, blasphemous, scandalous, defamatory, proscribed or prohibited;
  - (iv) living creatures, dead animals or parts thereof;
  - (v) Securities, endorsed stock, bond, cheque, stamps, irreplaceable legal or business documents; and
  - (vi) any items deemed as Excluded Goods as specified by the Company, from time to time.
- (b) If the Customer delivers any Excluded Goods to the Company or causes the Company without its knowledge to handle or deal with such Goods, the Customer shall be liable for all loss or damage, or any negative consequences whatsoever caused by or to or in connection with such Goods howsoever arising. The Customer shall defend, indemnify and hold harmless the Company against all fines, penalties, liabilities, claims, damages, costs (including all legal costs calculated on an indemnity basis) and expenses whatsoever and howsoever arising in connection therewith.

## 2) **Dangerous Goods**

- (a) Except under special arrangements previously agreed between the Company and the Customer in writing, the Company shall not accept or deal with the Dangerous Goods or any Goods likely to cause damage. The expression "Goods likely to cause damage" includes Goods likely to harbour or encourage vermin or other pests.
- (b) If the Company agrees in advance to accept any Dangerous Goods under these Conditions, the Customer shall warrant that it has obtained all necessary permits or permissions from the relevant

authorities to enable the Company to render the Services including handling, transportation and/or storage. The Customer shall ensure that the Dangerous Goods are accompanied by a full declaration of the nature, proper shipping name, label and classification of the Goods as well as the method of rendering them innocuous nature, character and contents. The Customer shall provide the Company with special instructions in writing and Material Safety Data Sheet (MSDS) for the handling and care of the Dangerous Goods at least twenty four (24) hours ahead of delivery or picking up or storage, where applicable, of the Dangerous Goods.

- (c) The Customer shall distinctly and permanently mark the nature and danger of such Goods on the outside of the package or container containing such Goods as required by any law or regulations which may be applicable during the transportation. The Company shall not be liable for any loss and/or damage to the Dangerous Goods arising out of the Customer's failure in compliance with such obligations.
  
- (d) Notwithstanding that the Company may have accepted the Dangerous Goods under arrangement previously agreed between the Company and the Customer in writing, 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.
  
- (e) If the Customer delivers any Dangerous Goods to the Company or cause the Company to handle or deal with such Goods otherwise than under special arrangements previously agreed between the Customer and the Company in writing and whether or not the Customer was aware of the nature of the Goods, the Customer shall be liable for all loss or damage whatsoever caused by or to or in connection with such Goods howsoever arising, including such loss and damage caused to third

parties which the Company is obliged to compensate and/or damage caused by injury and/or any form of financial loss. The Customer shall defend, indemnify and hold harmless the Company against all fines, penalties, liabilities, claims, damages, costs (including all legal costs calculated on an indemnity basis) and expenses whatsoever and howsoever arising in connection therewith.

- (f) In the event that the Goods handled by the Company in the performance of the forwarding work are deemed to be dangerous pursuant to the relevant regulations for the carriage of dangerous substances on inland waterways, by road or by sea, such handling of the Goods shall be governed in accordance with such laws and regulations applicable in the jurisdiction(s).

### 3) **Perishable Goods which are not loaded in Refrigerated Container**

- (a) The Company shall be entitled, at its sole discretion and without any further notice to the Customer, to sell or dispose of all perishable Goods which are not taken up immediately upon arrival or which are insufficiently addressed or marked or otherwise not readily identifiable. All charges and expenses incurred by the Company in connection with such sale or disposal shall be borne by the Customer.
- (b) Payment or tender, at the Company's sole discretion, by the Company to the Customer of the net proceeds (if any) of such sale or disposal after deduction of all outstanding fees and charges and expenses shall be equivalent to delivery.

### 4. Perishable and Temperature-sensitive Goods which are loaded in Refrigerated Container

- (a) The Customer shall provide the Company with written information including, but not limited to, the carriage instructions, storage requirements, set point temperature which is a carrying temperature of a laden refrigerated container.

The Customer expressly acknowledges its obligation to ensure that pre-trip inspection of container, pre-stuffing sanitation, pre-cooling of reefer container at a proper loading bay where the temperature in the cold store and in the container are identical, pre-cooling of Goods, proper packaging, stuffing and storage, cooling during part-loaded conditions, setting and/or checking of temperature controls on the container at the required carrying temperature, are carried out in accordance with the best and recommended practices.

The Company shall not be held liable for any loss and/or damage to the said Goods resulting from the Customer's failure in complying with aforesaid obligations.

- (b) The Company agrees to exercise due diligence and to reasonable care in maintaining the refrigerated container throughout the period of its Services.
- (c) The Company has the right, but not the obligation, to reject any laden refrigerated container, loaded by the Customer where the Goods are not or were not loaded into the container at the contracted carrying temperature. The Customer expressly acknowledges that refrigerated containers are not designed to cool or freeze Goods which have been loaded into a refrigerated container at a temperature higher than their designated carrying temperature. The Company shall not be responsible for the consequences of the Goods being loaded at a higher temperature than that required for the carriage, nor to monitor and control humidity levels, even if a setting facility exists, and because humidity is influenced by many external factors, the Company does not guarantee and is not responsible for the maintenance of any intended level of humidity inside any Container.
- (d) The Company shall not be liable for any loss or damage to the Goods arising out of any latent defects, breakdown, defrosting, stoppage of the refrigerating or any other specialised machinery, plant, insulation and/or apparatus of the refrigerated container and other facilities.

## 5. Precious Goods

- (a) Unless any special arrangement is previously agreed between the Company and the Customer in writing, the Company shall not accept or deal with gold in any form, cash, coins, precious stones, jewellery, valuables, antiques, paintings, pictures, livestock or plant.
- (b) In case if any Customer delivers such precious Goods to the Company or cause the Company to handle or deal with such precious Goods other than under any special arrangement previously agreed between the Company and the Customer in writing, the Company has no liability at all whatsoever for any delay in delivery, confiscation when the Goods are found to be contraband or prohibited by law, shortage, pilferage, theft, loss, damage or claim howsoever or wherever caused in relation to the Goods nevertheless the Customer provides the Company with any document in which the value of such Goods is declared and described.

## 6. Non-perishable Goods

Upon the expiry of fourteen (14) days' notice in writing given by the Company to the Customer and the Customer has failed to provide the necessary instructions acceptable to the Company,

the Company shall be entitled, at its sole discretion and without any further notice, to sell or dispose of all non-perishable Goods, which in the opinion of the Company, cannot be delivered as they are insufficiently or incorrectly addressed or not collected/accepted by the consignee or for any other reason.

## 7. Bonded Merchandise Goods

- a. For the purpose of this Condition, Bonded Merchandise Goods means all dutiable Goods.
- b. The Company may accept Bonded Merchandise Goods for the storage at its warehouse in Custom bond prior to the payment of Custom duty, and for the transshipment after the payment of Custom duty as “security”, provided that the Customer has a valid and relevant license or permit for the production or import or export or sale or transport of Bonded Merchandise Goods covering the entire period of the Services provided by the Company in accordance with the rules, regulations and laws of Government which are enforced during the entire course of performance of the Company.

In addition to the charges of the Company for storage or transshipment of such Goods, all expenses incurred for the Custom formalities shall be borne by the Customer.

- c. The Customer shall be liable to the Company for taxes, fines, professional services and administrative costs in the event that any Authority finds that the Customer provided incorrect information to the Company.
- d. Where a warehouse receipt covers Goods in Customs bond, such receipt shall be void upon the termination of the storage period fixed by law, and the Company shall have no liability for Goods seized or removed by Customs.

## **8. Storage and Transfer, Delivery and Release, and Customer's Visit**

### **1) Customer's Agreement on Storage and Transfer of Goods**

Unless otherwise agreed in writing between the Customer and the Company, the Customer expressly agrees that the Company has every right to choose the suitable storage place for the Goods and to transfer the Goods to another place at any time. If the transfer of the Goods is taken place with or without advance notice to the Customer by reason of any situations beyond reasonable control of the Company, or in the interest of protecting the Goods, or in view of any other similar circumstances, the Customer expressly agrees that the risk and cost of the transfer shall be borne by the Customer.

### **2) Customer's Instructions for the Delivery and Release of Goods**

The Customer shall make its specific instructions in writing to the Company for the delivery and release of the Goods, including time, date and/or any other relevant information in detail upon surrender of any respective document or payment unless any other mean is previously agreed in writing between the Company and the Customer.

### **3) Customer's Visit**

The Customer and/or its agents visiting the place of storage or any other place of Company's premises for inspection or taking delivery of the Goods or any other purposes shall be at their own risk and expense and shall comply with the rules and regulation of the Company.

The Customer and/or its agents, who are granted access to the place of storage or any other place of Company's premises, shall be liable for any damage caused directly or indirectly including but not limited to any damage caused to the place of storage, the Goods and other Goods stored at the place of storage.

## 9. Government Tax, Custom Duty, and Others

The Customer shall be liable not only for any government taxes, custom duties, levies/deposits/ expenses, charged by the relevant Authorities in relation to the Goods but also for any storage charges, demurrages, penalties, fines, expenses, losses or damages whatsoever sustained and/or incurred by the Company in relation therewith. In addition to the foregoing and upon first written demand of the Company, the Customer shall indemnify the Company against such losses and/or damages.

## 10. Events of Default

Each of the following events shall constitute an "Event of Default":

- (a) any incorrect or incomplete or ambiguous information, in connection with the Goods, provided by the Customer to the Company; or
- (b) any breach of contract or warranty, in relation to the contract or these Terms and Conditions, committed by the Customer; or
- (c) any failure of the Customer for the timely payment due to the Company for the Services in accordance with the contract or under these Conditions;
- (d) any event when the Customer becomes or is adjudicated insolvent and/or bankrupt, or a receiver or trustee is appointed for Customer or its property, or a petition for reorganization or arrangement under any bankruptcy or insolvency law is approved, or the Customer files a voluntary petition in bankruptcy or the Customer consents to the appointment of a receiver or trustee; or
- (e) any limitation or change in the constitution or status, incapacity or death of the Customer.

## Part C – Company

### 11. Company's Warranties

The Company warrants that:

- (a) the Company agrees to provide the Customers with their requested Services subject to the Terms and Conditions herein set out and in accordance with the quotation, charges, rates, tariffs and fees as specified by the Company when the Customer enters into any transaction or business with the Company;
- (b) the Company ensures its responsibility for the performance of the Services shall come in effect from the time when the Company takes possession of the Goods until the completion of the Services;
- (c) the Company agrees to utilise all reasonable expertise and skills and to exercise due diligence and endeavours by taking reasonable care to the best of their knowledge and experience in providing the Services;
- (d) The Company obliges to provide Services, which are not specifically included in the initial scope of Services requested by the Customer, only after the agreement is reached and made in writing between the aforesaid parties. In such case, the Customer shall agree to pay the charges to the Company in relation to such Services at the rate set by the Company who will take into account the current usual practices without prejudice; and
- (e) The Company shall try its best to provide the Services timely as required by the Customer. Without prejudice to the foregoing, time shall not be the essence of any contract in relation to the performance of Services by the Company under these Conditions. Any statement by the Customer in relation to time for delivery shall be an estimate only and shall not be binding on the Company.

- (f) The Company shall arrange, at its sole discretion, the rate of speed at which the Services shall be delivered. The rate of speed shall as much as possible commensurate with the Customer's requirement but 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.

## 12. Company's Rights

### 1) 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.

### 2) Engagement of Subcontractors and Agents

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

### 3) Additional Measures

- (a) 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, unstuffing, 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:

- i. loss and/or damage to the Goods or any other Goods, storage place, equipment, carrier, environment or cause harm or injury to persons; or
- ii. 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.

- (b) 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.

#### **4) 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.

### **13. Exemptions from Liability**

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, stowage of the Goods or loading/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.

## 14. Performance of Services

- 1) Any instructions or orders given by the Customer and accepted by the Company in writing may be performed partly or entirely by the Company itself or by its subcontractor(s) without any notice to the Customer and at the sole discretion of the Company, but without prejudice to the rights, exemptions or exclusion/limitation of liability that the Company is entitled under the Conditions herein.
- 2) The Company is authorised by the Customer to perform the Services at Company's sole discretion in any manner the Company considers fit and to determine the means, route and procedures to be followed in the handling, storage, transportation, release, delivery or forwarding of the Goods delivered by the Customer to the Company.
- 3) Some of the Services, which are not part of the Company's work and are not specifically related to in the Conditions herein, may be governed by other conditions customary in the particular place or trade or stipulated to be applicable. In case of any discrepancy between such other conditions and the Conditions herein, the Company has absolute rights to make a decision which provisions it claims the benefit of.
- 4) Upon Customer's request at its cost, the Company may issue Warrants, Receipts, or any other documents in respect of the Goods stored or handled by the Company in accordance with the order of the Customer. The Customer shall not refer to any other condition, regulation or stipulation which may conflict with these Conditions.
- 5) Whenever the Services are affected or likely to be affected, by any unforeseen impediment, constraint or risk, or because of the deterioration of the Goods, the Company may exercise its rights to abandon its Services by placing the Goods at any location that the Company may consider convenient and/or safe at the Customer's cost and risk without prejudice to the Fees payable by the

Customer to the Company and the liability of the Company in respect of the Goods shall cease immediately.

- 6) The Company shall not be responsible or liable if any Goods are prevented from being delivered, confiscated or detained at any time during the period of Services performing by the Company. The Customer shall defend, indemnify and hold harmless the Company for any loss, damage, expense, liability, or claims incurred and/or suffered.
- 7) The Company shall not be liable or responsible for errors resulting from the corruption of electronically transmitted data, or from verbal instructions.
- 8) The Company is not responsible for any approval, review, registration or filing procedures required by any relevant rules or regulations or laws for the issuance or transfer of the Warrant, pledge or release of the Goods. The Customer shall indemnify the Company for any losses and damages whatsoever and howsoever arising out of or in connection with the Customer's failure to execute any of the foregoing.
- 9) The Company shall be discharged from all its liabilities after the handing over or delivery of the Goods to the Customer by the Company. Such handing over or delivery shall be deemed as a prima facie evidence of the delivery of the Goods in good order and condition.

## **15. Security, Refusal or Suspension of Services, Removal and Sale or Disposal of Goods and Lien**

### **1) Security**

- (a) The Customer acknowledges and agrees at its sole expense and risk that the Company has rights to:
  - i. insist the Customer to furnish a deposit or guarantee for monies which the Customer has to pay the Company for any Services rendered under these Conditions, or a security for the payment of freight, duties and/or other charges as

required by any Authority, subcontractor, or third party for which the Company shall not be obliged to furnish;

- ii. demand immediate settlement of the amount from the Customer for which security or payment has been furnished by the Company on behalf of the Customer; and
- iii. retain Goods or documents related to the Goods that the Company has or may have in its custody as security for all monies due and owing by the Customer to the Company until all such monies are paid in full.

(b) Notwithstanding anything contained in the paragraph (a) (ii) of the Condition 15.1, the Company shall at no obligation to make any payments to its subcontractor or any third party to perform any Services on behalf of the Customer until the Company has received the required deposit or guarantee for monies from the Customer.

## **2) Refusal or Suspension of Services**

The Customer acknowledges and agrees that the Company shall be entitled to refuse to perform or to suspend any Services under these Conditions at any time without judicial intervention and without any obligation upon the Company to pay any form of compensation whenever the following circumstances arise, but not limited to:

- (a) The Customer fails to provide the security stated in the Condition 15.1 herein 14 days of such request by the Company;
- (b) The early termination of the Agreement/Contract under the Conditions 23.3 (c) and 33 herein;
- (c) The Customer fails to take delivery of the Goods from the stipulated Delivery Address within the stipulated period;

- (d) The Customer insists the Company to deliver the Goods to the unstipulated Delivery Address without the consent of the Company; and
- (e) The Customer insists the Company to render Additional Services which are beyond the capacity of the Company or without the consent of the Company;

### **3) Removal and Sale or Disposal of Goods**

- (a) The removal of the Goods shall be arranged by the Customer within fourteen (14) days, or in the case of perishable Goods, three (3) days, from the date of notice given by the Company to the Customer in writing. The time periods may be extended by the Company at its sole discretion.
- (b) If the Customer fails to comply with the paragraph (a) of Condition 15.3, the Company may, without any notice, sell or dispose of the Goods at the Customer's risk and expense by an appropriate mean and at a price that the Company considers reasonable. Any proceeds of sale will be remitted to the Customer only after the deduction of all expenses incurred for the sale. The Company shall not be liable for any alleged failure to achieve a sufficient sale price for the Goods.
- (c) In any event, if the Company is unable to sell the perishable Goods and thereby such Goods are required to be disposed as an environmental protection measure, the Customer is entirely responsible for the disposal at its own risk and expense including approval from any relevant Authority, as applicable. If the Customer fails to do so and the Company has to dispose on behalf of the Customer, all expenses incurred in the disposal shall be borne by the Customer. Notwithstanding the foregoing, the Company shall have no obligation for the disposal of such Goods and the Customer shall defend, indemnify and hold harmless the Company against all

finances, penalties, liabilities, claims, damages, costs (including all legal costs calculated on an indemnity basis) and expenses whatsoever and howsoever arising in connection therewith.

- (d) Action taken by the Company under this Condition may not in itself terminate the contract between the Company and the Customer unless the Company expressly states so.

#### **4) Lien**

- (a) The Customer acknowledges and agrees that the Company shall, on its own behalf and as agent for any assignee of its invoices, have a general and particular lien on the Goods and any documentation or records relating thereto that are in the possession or come into the possession of the Company as security for payment of all sums (whether due or not) claimed by the Company from, (or actually or prospectively payable to the Company by), the Customer or another Interested Party on any account (relating to the Goods or not), or otherwise claimed in respect of the Goods or other property of an Interested Party.
- (b) Where a lien secures all sums payable to or claimed by the Company, it shall continue to cover those sums notwithstanding any transfer of ownership of the Goods, or change of the Customer. Storage and all other costs, if any, shall be charged for any Goods detained under lien or where the Company is required by any competent authority to retain them.
- (c) The Company may enforce such lien in any manner which the Company may consider fit. The Company has the right to detain, sell all or any of the Goods by public auction or private treaty at the price determined solely by the Company without notice to the Customer and to apply such part of the proceeds of the sale as is necessary to satisfy the unpaid Company Charges, accounts and sums owing to the Company including all costs of detaining and selling the Goods.

## 16. Exclusion and Limitation of Liability of the Company

### 1) Exclusion of Liability

- (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 mis-delivery, 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 16.1, 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 or 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 party 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;
  - (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.

## 2) Limitation of Liability

(a) Subject to the Condition 16.1 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 Freight Forwarding Work, loss or damage sustained is in respect of any consignment, whether in whole or in part, the aggregate amount of total damages recoverable from the Company shall be a sum calculated at the maximum rate of US\$ 5.00 per kilogram damaged or lost gross weight, subject always to the maximum liability of the Company in this regard being US\$5,000.00 per consignment or the net value of the consignment at the time the Company took possession of the same, whichever is lesser;
- (ii) where in performing Warehousing Work, 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 a sum calculated at the maximum rate of US\$3.00 per kilogram damaged or lost gross weight, subject always to the maximum liability of the Company in this regard being US\$50,000 per event or series of events resulting from one and the same cause or the net value of the consignment at the time the Company took possession of the same, whichever is lesser; and

(iii) where in performing any Work, physical damage sustained is in respect of any container, vehicle or property in any form other than the Goods, the aggregate amount of total damages recoverable from the Company shall be either the depreciated value of the same or the reasonable cost of repair as agreed between the Customer and the Company, 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.

## 17. General Average

When the consignment includes carriage of Goods by sea and if there is a General Average event (with or without salvage services) in accordance with the New Jason Clause, which is incorporated in the Bills of Lading/Waybills, and the York-Antwerp Rules 2016 adopted by the Committee Maritime International (as amended if any at any time), the Customer acknowledges and agrees that the Company has no obligation, by statute, contract or otherwise, to collect "General Average Security, General Average Contribution or Savage Security" from the Customer or the owner of the Goods on behalf of the Carrier.

Notwithstanding the foregoing, the Customer indemnifies and holds harmless the Company in respect of any claims of a General Average nature which may be made against the Company and thereby the Customer shall provide such security as may be required by the Company in this connection.

## **18. Collect on Delivery (COD) Shipments**

- (a) On behalf of the Customer and its instruction, the Company will exercise reasonable care to collect cash, bank drafts or otherwise, from the receiver of the Goods for the COD shipment and the fund will be remitted to the Customer by the Company at its earliest opportunity.
- (b) In no case shall the Company be liable for the selection of the bank, fluctuation of the exchange rate, insolvency of the bank, any delay in remittance of the fund to the Customer, and any act or omission throughout the entire process, from the delivery of the Goods until the remittance is made.

## **19. Severability, Assignment and Waiver**

### **1) Severability**

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.

### **2) Assignment**

The Company may assign its rights or transfer its obligations under any contract made between the Customer and the Company to its related corporations incorporating these Conditions without the Customer's prior written consent.

### 3) Waiver

No failure or delay of Company in exercising any power or right under these Conditions shall constitute as a waiver thereof, nor shall any single or partial exercise of any such right or power or any abandonment or discontinuance of steps to enforce such right or power precludes any further exercise thereof or the exercise of any other right or power.

## 20. Financial Failure of Shipping Company

The Customer expressly agrees that the Company shall not be held liable for the following conditions or losses:

- (a) any loss or damage or claim because of the delay in arrival, departure, port access, berthing or unberthing of the ship;
- (b) the delay in loading of the Goods on board or discharging of the same from the ship;
- (c) the additional charges or penalties imposed by the terminal operators, port authorities or owner of container or any transport unit on hire;
- (d) the delay in taking delivery of the Goods from the terminal operators;
- (e) the costs of redelivery to the Customer, because of the rejection made by the buyer of the Goods due to delay; and
- (f) the pre-paid freight, costs of legal proceeding or any other similar causes and consequences, which may be arising out from the bankruptcy, insolvency, winding up or financial default of the shipping company or arrest of the ship by the creditors to the shipping company.

## 21. Company as Agent

- (a) Where the Company acts as agent for and on behalf of the Customer, the Company is entitled to enter into a contract "in the name of the Customer" or "in its own name for and on behalf of the Customer" with any third party. In any case, the contract concluded shall have direct binding effect on the Customer and the third party and thus the Company shall be in no event construed as any one of the followings:
- (i) a Carrier for the carriage of the Goods by any mode of transportation, by road, by rail, by air or by sea; and/or
  - (ii) a Principal with the Customer for the storage, transportation, transshipment, loading, discharging, or any other handling of the Goods which are solely responsible by the third party.
- (b) In addition to the "exemptions from" and/or "exception or limitation of" liability in accordance with any applicable law under any competent jurisdiction or in any other Conditions herein, the Company is entitled to the benefit of all exceptions and limitations in favour of any third party expressly contained or implied in the contract which is made between any third party and the Company as agent for and on behalf of the Customer.
- (c) The Customer expressly agrees that it shall not make any attempt to impose on the third party any liability which is higher than that accepted by such party under the contract or the "exemptions from" and/or "exception or limitation of" liability in any other Conditions herein whichever is the lesser.
- (d) Where the Company acts as agent, the Company shall not be liable for the loss to the Customer and or the loss caused by the acts or omissions of the third party, except to the extent that the loss is caused by the wilful act or gross negligence of the Company and thereby the Customer shall defend,

indemnify and hold harmless the Company in respect of all liabilities, losses, damages, expenses, and costs of legal proceeding arising out of any contract made with any third party.

## 22. Company as Principal

### 1) The Company's liability as Carrier in Freight Forwarding Works

- (a) The Company is subject to liability as principal when it actually performs the carriage itself by its own means of transport (performing Carrier), and if, by issuing its own transport document or otherwise, it has made an express or implied undertaking to assume Carrier liability (contracting Carrier). In such a case, the Company is responsible as the multimodal transport operator with respect to the Goods under multimodal transport contract which covers the period from the time of taking the Goods in its charge to the time of their delivery. The responsibility of the Company shall be determined by the principle of network liability, subject to the laws and regulations governing a specific section of the multimodal transport. When the Customer accepts a transport-document issued by a person other than the Company and the Customer fails to demand the Company to bear the responsibility as principal, the Company shall have no responsibility and liability as principal.
- (b) Where the Company contracts as principal, the Company shall not be responsible for the acts and omissions of the third party employed by the Company in undertaking carriage of the Goods or other services unless such acts and omissions are done by the Company itself. However, the operation of foregoing shall not preclude the Company from the benefits of the exceptions and liability limitation under the laws and these Conditions.

### 2) The Company's liability as Principal for other Services

With respect to services other than carriage of the Goods such as, but not limited to, storage, handling, packing or distribution of the Goods, as well as ancillary services in connection therewith, the Company shall be liable as principal:

- (a) when such Services have been performed by itself using its own facilities or employees; or

(b) if the Company has made an express or implied undertaking to assume liability as principal.

### **3) The basis of the Company's liability as Principal**

Where the Company acts as principal for freight forwarding works or for other services, Condition 13 (Exemptions from Liability) and Condition 16 (Exclusion and Limitation of Liability of the Company) herein shall be applied.

### **4) Limitation of Liability for Maritime Claims and the Limitation Fund**

Whenever the owner of the ship, or any other organization or person such as the manager and operator, or the charterer, constitutes a limitation fund with the Court or other competent authority for alleged maritime claims in respect of the loss of or damage to the Goods either at sea or inland waterways in accordance with the rules of Convention on Limitation of Liability for Maritime Claims, 1976 and its Protocols (LLMC Convention) or the rules of National Law whichever is applicable, the liability of the Company shall be limited to the said fund apportioned to the Goods.

### **5) Carriage of Goods by Air and Sea**

#### **(a) Carriage of Goods by Air**

In addition to the Conditions herein, the terms and conditions as appeared in the respective airway bill shall also be applied.

#### **(b) Carriage of Goods by Sea**

In addition to the Conditions herein, the terms and conditions as appeared in the respective bill of lading or waybill shall also be applied.

## 23. Quotations, Charges and Payment Terms

### 1) Quotations

- (a) Upon request, the Company will provide the Customer with a quotation for any Service. Unless otherwise agreed, quotation constitutes an invitation to treat only.
- (b) Any quotation submitted by the Company to provide services will be open for a maximum period of thirty (30) days following the submission thereof and it shall thereafter be deemed withdrawn. Any quotation may be withdrawn by the Company prior to the acceptance.
- (c) Any quotation is based on the details provided to the Company by the Customer as regards to the Goods or storage of Goods, fixtures and Services requested by the Customer in relation thereto. If any such detail provided by the Customer is found to be incorrect, the Company may either adjust its charges accordingly or withdraw the quotation.
- (d) Notwithstanding the acceptance of the quotations by the Customer, the Company shall have liberty to revise quotations or charges with or without notice if any changes, which are beyond the Company's control or unforeseeable, take place such as but not limited to, changes in government tax, currency exchange rates, rates of freight, insurance premiums or any other changes applicable to the Goods in connection with the Services.
- (e) Once the quotation is accepted by the Customer, the quotation shall form an essential part of the contract.
- (f) If the Customer wishes to cancel or terminate its acceptance of the quotation, the Customer shall be liable to the costs incurred for the preparation of the requested Service made by the Company.

### 2) Charges

- (a) Charges will be calculated in accordance with the standard rates and tariffs of the Company. Unless specifically in writing agreed otherwise, the Company is entitled to yearly adjustments in rates and

tariffs, pursuant to any increase of costs, such as but not limited to costs of labour, equipment and fuel.

- (b) The Company may, at its sole discretion, proceed with electronic invoicing for the charges using the email address specified by the Customer.
- (c) A minimum handling charge per pallet per one (1) cubic meter per one (1) metric ton and a minimum storage charge per such pallet per month or storage space shall be charged as specified by the Company from time to time. The Company shall be entitled to charge the Customer a minimum charge per mark, brand or variety for mixed Pallets.
- (d) A minimum monthly charge will apply to each account opened for the provision of any part of the warehousing and distribution Services. In the event that one Customer has several accounts, the charge will apply also to each account.
- (e) All charges and other sums payable are exclusive of taxes, duties and government charges, imposed or levied in connection with the services to be rendered by the Company, including but not limited to Service Tax or Goods and Services Tax (currently five percent 5%). These taxes, duties and government charges shall be payable in addition to such sums chargeable by the Company. The Company reserves the right to charge a fee on payment /disbursement paid in advance by the Company on the Customer's behalf. The Company reserves the right to increase its charges including fuel surcharge, handling fees, declaration fees, overtime, labour charge and/or to charge the Customer for any additional expenses incurred from time to time.
- (f) The operating hours of the Company (hereinafter referred to as "Operating Hours") are on Working Days within the following times:
  - i. Mondays to Fridays, from 0830 to 1730 hours; and
  - ii. Saturdays, from 0830 hours to 1300 hours.

Working Days in this Condition means Mondays to Saturdays and excluding public holidays.

- (g) The Company shall be entitled to charge and to impose surcharge/overtime charges/labour charges and/or additional charges (as specified by the Company) in respect of any request for Services to be performed outside of these Operating Hours. For the avoidance of doubt, Sundays, public holidays are deemed outside Operating Hours.
- (h) The Company is entitled to charge a currency conversion premium when converting United State Dollar into Myanmar currency. The Customer acknowledges that the Customer will bear any additional costs in currency/ conversion rate fluctuations and shall pay the sums as stated in the invoice (which may differ from quotations).
- (i) Any dispute, as to the amount or accuracy of any invoice issued by the Company, shall be brought to the attention of the Company by the Customer in writing within thirty (30) days from the date of the invoice. Failing which, the Customer is deemed to have conclusively accepted that the invoice is complete and accurate.
- (j) The Company may at any time reassess, reweigh, re-measure or revalue or require the Goods to be reassessed, reweighed, re-measured or revalued and charge proportional charges accordingly.

### **3) Payment Terms**

- (a) Unless otherwise expressly agreed in writing, all invoices rendered by the Company are payable by the Customer immediately upon receipt.
- (b) The Customer undertakes to pay six (6) months charges for the storage of Goods in advance and shall confirm at least two (2) months prior to the foregoing period as to whether such storage to be continued for the remaining two (2) months.
- (c) If the Customer wishes to cancel or terminate the contract before the minimum storage period, the Customer shall be liable to pay a cancellation or early termination charge in a sum specified in the quotation or the storage contract to compensate the Company for any and all losses, damages, claims and whatsoever it shall sustain by reason of such cancellation or early termination. Such charge shall

be without prejudice to any rights that the Company may have against the Customer in relation to such cancellation or early termination.

- (d) The Customer shall pay to the Company in cash or in such manner as the Company may agree to all sums immediately when due without deduction or deferment on account of any claim, counterclaims, or set-off.
- (e) On all amounts overdue to the Company, the Customer agrees that the Company shall be entitled to the interest calculated on a daily basis from the date such accounts are overdue until payment thereof at the rate of zero point zero eight three percent (0.083 %) per day.
- (f) When the Company is instructed to collect freight, duties, fees, charges or other expenses from any person other than the Customer and encounters difficulty in collecting, the Customer shall unconditionally forthwith pay the same.
- (g) The Company shall be entitled at any time to suspend the provision of all or any part of the Services or to cancel all credit terms in respect of all or any part of the Services rendered pursuant to these Conditions if at any time any sums due from the Customer to the Company shall not have been duly paid.
- (h) Charges paid to the Company shall be non-returnable in any event.

## **24. Warehousing Services**

### **1) Particulars of the Goods, Required Information and Instructions**

- (a) In order to achieve efficient and effective performance of the Company, the Customer shall provide the Company with the following information, as applicable in writing and in a timely manner, but not limited to:

- (i) weight, volume, quantity, quality, type, nature, composition, temperature, source, origin and chemical or hazardous properties of the Goods;
  - (ii) any special requirements for the storage because of the nature of the Goods;
  - (iii) any special instructions for the lifting appliances, methods or means of loading or discharging;
  - (iv) any legal matters such as ownership of the Goods, required formalities by any authorities; and
  - (v) any other particulars of the Goods which deem essential for the Company.
- (b) The Customer guarantees that the particulars of the Goods and the required information and instructions provided to the Company, are true, complete and accurate until completion of warehousing Services performed by the Company.

## **2) Condition of the Goods**

- (a) The Customer shall deliver the Goods to the Company in a good condition and adequately packed with appropriate and secured packaging.
- (b) If the Goods delivered to the Company are found to be defective or deteriorated at the time of arrival at the warehouse or during the custody of the Company, the Company has right to reject or is entitled, but not obliged, to take reasonable steps to safeguard the Goods by all available means so as to protect the Customer's interest against the Carrier or others at the Customer's risk and expense. The Company will notify the Customer of the action taken at its earliest opportunity, but failure to do so shall not grant the Customer any right of claim against the Company.

### **3) Delivery of the Goods**

- (a) The Customer shall deliver the Goods to the designated place of storage, decided and advised by the Company.
- (b) The Company may take delivery of the Goods from the Customer's place at the Customer's request and expense. In such a case, the Customer undertakes to pay additional charges at hourly basis for any labour, equipment and transportation utilised by the Company if there is any delay arising out from the Customer's failure.

### **4) Weight and Measurement of the Goods**

- (a) The Customer shall declare the weight and measurement of the Goods in an accurate manner. The Company has no obligation to weigh or measure the Goods upon receiving of the Goods, but may do so at its sole discretion. If the weighing or measuring of the Goods by the Company reveals any difference, the cost of the such work shall be borne by the Customer.
- (b) The Company has no liability for additional charges, fines or penalties which may be imposed by the third party or any authority who discovers excess weight or measurement of the Goods, unless it was initially ascertained by the Company at the Customer's request and expense.

### **5) Inspection of the suspected Goods**

In case when the Company suspects that any Goods which are or include any illegal, dangerous, explosive, corrosive or other substance harmful to either persons or the property of the Company or of others during the custody of the Company, the Company may at any time request the Customer to open such Goods for inspection. If such a request is denied by the Customer, the Company has the right to break or force to open and handle the Goods whereby all the costs incurred by the consequences to such breakage shall be absolutely on the Customer's account.

## 6) Ownership of the Goods

The Customer is obliged to immediately notify the Company in writing of transfer or passing of ownership of Goods or transfer or passing of the right to take delivery of the Goods, as the case may be.

## 7) Receipt and Release of the Goods

- (a) Upon receiving of the Goods by the Company, the Company may issue a Warehouse Receipt to the Customer upon request from the Customer.
- (b) The description, specification, particulars, contents and condition of the Goods thereof as stated on a Warehouse Receipt, delivery order and/or release issued by the Company shall be based on the information provided in writing by the Customer to the Company. Issuance of any aforesaid document shall not construe as Company's confirmation on the correct description, specification, particulars, contents and condition of the Goods described therein.
- (c) The expression of "said to contain", in relation to the description, specification and/or particulars of the Goods thereof as stated on any one of such documents issued by the Company, shall mean that "such description, specification and/or particulars of such Goods are as represented and provided by the Customer" and thereby the Customer accepts that the Company does not represent or warrant the truth or accuracy of such description, specification and/or particulars of such Goods.
- (d) If a Warehouse Receipt is issued for the Goods, the Company is entitled to deny the release of any Goods stored with the Company unless it has received the original Warehouse Receipt from the named party on the Warehouse Receipt.

## 25. Freight Forwarding Services

### 1) Permits

The Customer shall obtain all necessary permits in accordance with the requirement of respective authorities prior to the physical delivery of the Goods to the destination.

### 2) Particulars of the Goods, Required Information and Instructions

- (a) The Customer shall provide the Company with all relevant information and instructions, as applicable, in writing and in a timely manner as follows:
- (i) weight, volume, quantity, quality, type, nature, composition, temperature, source, origin and chemical or hazardous properties of the Goods;
  - (ii) any special requirements for the storage because of the nature of the Goods;
  - (iii) any special instructions for the lifting appliances, methods or means of loading or discharging;
  - (iv) any legal matters such as ownership of the Goods, required formalities by any authorities; and
  - (v) any other particulars of the Goods which deem essential for the Company.
- (b) The Customer guarantees that the particulars of the Goods and the required information and instructions provided to the Company, are true, complete and accurate until completion of freight forwarding Services performed by the Company.

### 3) Appointment and Authorization

To enable the Company to perform freight forwarding Services for and on behalf of the Customer, the Customer appoints and authorizes the Company to:

- (a) undertake, or appoint an agent to undertake, all the necessary procedures for compliance with the customs formalities in accordance with rules and regulations of the Government in the relevant jurisdiction with respect to the storage and/or release of Goods at the warehouse facilities; and
- (b) act as a handling agent to receive, hold, and release, all documentation relating to the freight forwarding Services.

#### **4) Documentation**

- (a) The Customer shall deliver the documents required for receipt, dispatch, and instructions to the Company on or prior to delivery of the Goods to the Company.
- (b) The Company may, upon the Customer's request, issue receipt intended to confirm the Company's possession of specified documents of title in respect of the Goods, but it does not interpret or provide any confirmation that the Goods specified in the holding confirmations are under the control, or possession, of the Company.

#### **5) Storage**

The Company at its sole discretion, may keep the Goods delivered into the possession of the Company at a warehouse or any place or places as it deems fit. The Customer agrees to comply with the terms and conditions imposed by the owner or operator of the warehouse, and any other applicable rules and regulations of the Government in the relevant jurisdiction where the warehouse is located.

#### **6) Survey and Verification**

- (a) Services such as, sampling, tallying, weighing, measuring of the Goods under official survey, may be performed by the Company at Customer's expense and risk in accordance with the Customer's instructions in writing. In any case and as the Company is neither an expert nor in position to confirm

the state, nature or quality of the Goods, the Company in no way is liable for any consequences arising from the said Services.

- (b) Unless the Company gets any specific instruction in writing from the Customer, the Company is not obliged to verify whether the sample is identical with the Goods received by the Company or inspect that such Goods are matched with the description provided by the Customer or make any declaration for the purpose of any statute, convention or contract with regards to the nature, quality or value of the Goods.
- (c) The Company is not obliged to but entitled to examine the contents of the Goods at the time of delivery of the Goods to the Company and/or at any time during the whole period while the Goods are kept at the Company's storage facilities.

## **7) Sale or Transfer of Goods**

- (a) The Customer shall not sell or transfer whole or any part of the Goods to any third party, unless the Customer provides the Company with an evidence of such third party's acceptance in writing, stating that all Conditions of the contract or agreement between the Customer and the Company in respect of the Goods remains valid at the time when such third party acquires any interest in the Goods.
- (b) In the event the Customer fails to satisfy any of its obligations stipulated in the Conditions of the contract or agreement, the Customer accepts that it shall continue to be bound to the Company of all of its obligations owed to the Company as stipulated in the contract or agreement between the Customer and the Company in respect of the Goods notwithstanding any interest in the Goods may have moved from the Customer to the third party.
- (c) If the Customer sells or transfers whole or part of the Goods, it does not release the Customer of its previously assumed obligations to the Company until the Company has confirmed in writing to the Customer that the Company has accepted such sale or transfer of the Goods.

## 8) Transfer of Goods

The Customer shall oblige to notify the Company immediately in writing of the transfer of ownership of Goods or the transfer of right to take delivery of the Goods.

## 9) Dates and Times

- (a) Unless otherwise previously agreed in writing between the Customer and the Company that the Goods shall depart or arrive by a particular date and time, the Customer accepts that the Company has no responsibility for departure or arrival dates and times of the Goods.
- (b) Dates and times arrival, departure, berthing and unberthing of the floating or rolling means of transport are solely estimates for the information of the recipient only and shall not bind the Company.

## 10) Company's Discretion

Unless otherwise previously agreed in writing between the Company and the Customer, and in addition to the Company's liberty in other Conditions herein, the Company is authorized by the Customer to:

- (i) arrange storage, packing, unpacking, removal, transfer, transshipment or otherwise handling of the Goods;
- (ii) decide whether to containerize the Goods or to carry the Goods on deck or in hold on board the ship;
- (iii) select the carrier, mode and route of transport for the Goods;
- (iv) depart or deviate from the Customer's Instructions in any respect if in the opinion of the Company such departure or deviation is necessary or desirable in the Customer's interests; and
- (v) make other arrangements in pursuance to the Instructions of the Customer or as deemed necessary by the Company at sole discretion of the Company without any notice to the Customer.

## Part D - Customer and Company

### 26. Insurance

- (a) The Goods, delivered into the custody of the Company, shall be and remain at the sole risk of the Customer.
- (b) Unless otherwise previously agreed between the Company and the Customer in writing, the Company shall not be obliged to arrange for any insurance in respect of the Goods delivered into its custody for the benefit of the Customer.
- (c) The Customer shall maintain a valid insurance cover for all the Goods from the original point of pick up to the final point of delivery at the Customer's costs, including without limitation the insurance against any damage to the Goods while in transit or while in any Storage Facility and/or during the provision of any Services performed by the Company for the Customer under this Condition, howsoever caused.
- (d) (d) In the event the Goods are insured by the Customer, the Customer shall waive and shall procure all persons to waive all rights of subrogation under the insurance policy against the Company. If the Customer fails to procure the insurance policies and the waiver all rights of subrogation under the insurance policy against the Company, the Customer shall indemnify, defend and hold the Company harmless against all the consequences of having failed to comply with its obligations herein.
- (e) Insofar as the Company agrees with the Customer to arrange insurance for the benefit of the Customer, the Company may act solely as agent for and on behalf of the Customer to make all arrangements with the insurer, including those regarding the conditions of insurance and settlement of claims in respect of any damage, at the Customer's costs, using the Company's best endeavor to arrange such insurance in accordance with the following provisions:

- (i) The Customer shall be responsible to provide all the necessary information to the insurers or underwriters and to pay the premiums and expenses. In addition to the value of the Goods, the risks to be covered shall clearly be expressed in writing by the Customer;
- (ii) The Company shall not be responsible in respect of the selection of the insurers and their ability to pay;
- (iii) (iii) Any such insurance shall be deemed entered into by the Customer as principal with the relevant insurer or underwriter accepting the risk wherein the Customer shall be subject to the exceptions and conditions as may be required by the insurer or underwriter accepting the risk notwithstanding that the Company collects the premium or charges the Customer an additional surcharge for such insurance. The Company does not undertake any professional liability or responsibility to ensure that the coverage so acquired is sufficient or provides comprehensive indemnity for the loss or damage of the Goods;
- (iv) The Company has right to make an additional charge for arranging such insurance and/or receive any referral fee (if any) from the insurer or underwriter;
- (v) Provided always that the Company shall have no liability or responsibility whatsoever (whether in negligence, contract or otherwise) in respect of any insurance policy or insurance arrangements or claims thereof.
- (vi) The Company is not the insurer and no deduction or set-off shall be made from any Company charges or other moneys due to the Company on any account pending settlement by the insurer;
- (vii) The Company shall not be under any obligation to effect a separate insurance on each consignment, but may declare it on any open or general policy;

- (viii) The Customer shall be liable for all insurance premiums calculated on the basis of one full calendar month such that part of a month shall count as one full calendar month, unless otherwise agreed in writing by the Company;
- (ix) If the Company has arranged an insurance policy in its own name, it may, at its sole discretion, transfer any claims against the insurer to the Customer. Should the insurers or underwriters dispute their liability for any reason whatsoever, the Customer shall only have recourse against the insurer or underwriters concerned, taking the risk, and the Company shall not be under any responsibility or liability whatsoever and in relation thereto. The Company shall not be liable for any loss arising from the failure of the insurer to pay in full or in part or because a claim in respect of damage is being disputed as a result of circumstances for which the Company cannot be held liable irrespective of the manner in which the Company was concerned in effecting the insurance;
- (x) On behalf of the Customer, the Company shall be entitled to collect the amount of any claims
- (xi) from the insurer, but shall only be obliged to pay the compensation received by it to the Customer after deducting all monies due and owing to the Company; and
- (xii) If the Company has to utilize any special lifting appliances and any other such equipment for carrying out any Services in relation to the Customer's Goods, the Company shall be entitled to arrange for the insurance at the Customer's expense to cover the risks which may arise from such utilization.

## **27. Notice of Claim and Time Bar**

### **1) Notice of Claim and Time Bar in Warehousing Services**

#### **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 is a *prima facie* evidence of the delivery of the Goods in good order and condition. Where such loss or damage is not apparent at the time of handing over, 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 sub-paragraphs (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 shall be counted from the time when the failure of the Company giving right to the claim occurred.

## **2. Notice of Claim and Time Bar in Freight Forwarding**

### **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 at the time of handing over, the same *prima facie* effect shall apply if notice in writing is not given within six (6) consecutive days after the day when the Goods were handed over to 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 fourteen (14) 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 sub-paragraphs (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 nine (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 consignee the right to treat the Goods as lost.
- (ii) With respect to other loss than loss of or damage to the Goods, the nine (9) months period shall be counted from the time when the failure of the Company giving right to the claim occurred.

### **28. Notices between the Company and the Customer**

- (a) Any notice which is required to be given in accordance with these Conditions herein shall be deemed to have been duly given, if it is addressed to the party to whom the notice is given by hand or by prepaid registered post or by facsimile or electronic mail.
- (b) Such notice shall be deemed to have been duly given to the recipient on the date when it is delivered by hand, or on the date of arrival of the notice at the address of the recipient if it is sent by prepaid

registered post, or on the date when it is sent by facsimile or electronic mail, no matter whether or not the recipient acknowledges receipt so far as the sender has a valid evidence.

- (c) If the notice is given through on official public holidays such as Saturday or Sunday by facsimile or electronic mail, such notice shall be deemed to have been duly given to the recipient on Monday. The similar manner shall be applied for any other official public holidays other than Saturday or Sunday.

## **29. Compliance with applicable Laws and Government Orders and Completion of Service**

### **1) Compliance with applicable Laws**

The Customer and the Company shall comply with any applicable rules, regulations and laws of the relevant Government in the relevant jurisdiction with regards to the carriage of Goods by Air or Inland Waterways or Rail or Road or Sea. If there is any discrepancy between “any Terms and Conditions herein” and “any rules, regulations and laws of the relevant Government in the relevant jurisdiction”, the latter shall prevail.

### **2) Compliance with Government Orders**

The Customer agrees that the Company shall have liberty for the compliance with any rules or regulations of the Government or any orders, instructions or suggestions given by or received from the Government or any other authorities in the relevant jurisdiction at Customer's sole risk and expense.

### **3) Completion of Service**

In an event if any confiscation or seizure of the Goods placed under the custody of the law or any disposition of the Goods arises during the period when the services are performed by the Company, it shall constitute completion of the Service provided by the Company with immediate effect, and thereby the Goods shall be solely at the Customer's sole risk and expense without affecting any fees or charges payable in full by the Customer to the Company.

## 30. Confidentiality

### 1) Confidential Information

For the purpose of this Condition 30, Confidential Information means

- (i) any content of written agreement or contract which is made between the Company and the Customer, incorporating any terms and conditions and the agreed rates;
- (ii) any information marked as confidential and received during the execution of such agreement or contract;
- (iii) any information, relating to the business dealings, transactions or affairs between the parties, which may come to the knowledge of any party, either the Customer or the Company, in the course of fulfilling its obligations for the agreed Services; and
- (iv) any system, strategy, technology, know-how, trade secret, methods, operations and/or data of either party other than what is accepted to be in the public domain.

### 2) Obligations

The parties, the Customer and the Company, agree that neither party shall:

- (i) disclose the other party's Confidential Information or Intellectual Property, whether from records or performing their contracted obligations, to a third party, except the lawful demands of emergency services, statutory or legal requirements; and/or
- (ii) publicize in any presentation, announcement, publication, or press release concerning the Confidential Information without prior written approval of the other.

### 3) Exclusions

The obligations as to Confidential Information shall not apply to such information which:

- (i) is contained on the exterior of a package, including information contained in plain text or bar code form on shipping labels, consignee's full name, complete delivery address, package size or weight;
- (ii) was known to the recipient prior to the time of disclosure or was received by the recipient from any third Party without obligation to preserve confidentiality;
- (iii) becomes publicly available; and
- (iv) is required to be disclosed to the lawyer, consultant, or adviser of a party in a confidential manner in order to fulfill its obligations in accordance with the Terms and Conditions of agreement or contract which is made between the parties; provided that such lawyer or consultant or adviser complies with this Condition.

#### **4) Official Disclosure**

In the event, if the disclosure of Confidential Information is required by law, regulation, legal proceedings or judicial proceedings, or pursuant to a request from a governmental authority, the receiving party shall notify the other party well in advance prior to the disclosure allowing the other party a reasonable time and opportunity to object it. In the event of such required disclosure, the receiving party shall disclose only the particular Confidential Information directly required to be disclosed.

#### **5) The Company's Rights to Disclose Customer's Information**

The Customer agrees that the Company shall be entitled to disclose information provided by or relating to the Customer to any other person in connection with the Company's performance of obligations under these Conditions herein.

### **31. Intellectual Property of the Company and Its Rights**

- (a) For the purpose of this Condition 31, Intellectual Property of the Company means all patentable and unpatentable inventions, discoveries, ideas, software, name, logos, graphics, icons, and images, as well as the selection, assembly, and arrangement thereof and other similar property (hereinafter "Materials") which belong exclusively to the Company and therefore the Company shall be the sole

owner of all copyrights, patents, inventions, discoveries and trade secrets in the same reserving its right to change, edit, and/or distribute same throughout the world.

- (b) The Company may grant its permission to the Customer to use certain Materials solely for the purpose of the Services during the course of performance and the Customer shall have no proprietary interest over such Materials. Any other use, including the reproduction, modification, distribution, transmission, republication, display, or performance of such Materials is strictly prohibited.
- (c) Such permission given by the Company to the Customer to use any Materials solely for the purpose of the Services during the course of performance shall be immediately invalid upon completion or termination of the Services.

## 32. Force Majeure

- (a) Neither party nor its subcontractor utilized to provide the Services shall be liable to another party for any delay in performance or any non-performance of its obligations as stipulated in these Conditions herein as a result of any event of Force Majeure.
- (b) If at any time, the Company's performance is or is likely to be affected by any event of Force majeure, which prevails for a period of more than 48 hours, notwithstanding any provisions herein and at its sole option, the Company, providing:
  - (i) warehousing Services, may terminate any agreement for the provision of any Service with immediate effect and without any further liability to the Customer, the Warrant Holder or any other person entitled to the Goods; and
  - (ii) freight forwarding Services, may abandon the carriage of the Goods under the respective contract and, where reasonably possible, make the Goods or any part of them available to the Customer at a place which the Company may deem safe and convenient, whereupon delivery shall be deemed to have been made, and the responsibility of the Company in respect of such Goods shall cease.

- (c) The Customer shall be liable to the Company for all charges in relation to the Services provided and all expenses incurred by the Company who acts in the best interest of the Customer at its discretion arising out of or in connection with any Force Majeure event whether under the Customer's instructions or not, until such time the Company ceases its Services.

### **33. Termination**

The termination of any agreement or contract which is made between the Customer and the Company (hereafter the agreement) shall be affected in accordance with this Condition 33.

#### **1) Termination by Either Company or Customer**

Either Company or Customer may give not less than three (3) months' notice that they wish to terminate the agreement at the end of which period the obligation of Company to provide the Services will cease.

#### **2) Termination by the Company**

- (a) In addition to the rights of Company for termination permitted in other Conditions herein, if:
- (i) the Customer fails to pay any amount due under the agreement on or before the due date;
  - (ii) the Customer is in material or persistent breach of any provisions of the agreement and the breach, if capable of remedy, has not been remedied within fourteen (14) business days after receipt by the Customer of notice requiring the breach to be remedied; and
  - (iii) the Customer suffers a bankruptcy event, or makes an assignment for the benefit of its creditors, or enters into any arrangement or composition with its creditors, or goes into liquidation.

the Company may terminate the agreement with immediate effect at any time by notice in writing to the Customer.

- (b) In the event of such termination with notice, the Customer shall not be entitled to claim for any damages, compensation and costs from the Company.
- (c) Such termination of the agreement shall not affect any rights of the Company stipulated in these Conditions and any fees or charges payable by the Customer to the Company arising prior to the termination,

### **3) Customer's Obligations on Termination**

On termination of the agreement for any reason:

- (i) the Customer shall immediately pay to the Company all of the Company's outstanding unpaid invoices and interest and, in respect of Services provided but for which no invoice has been submitted, the Company may submit an invoice, which shall be payable immediately on receipt; and
- (ii) the Customer shall remove its Goods, which are being stored by the Company, at the date of termination from the Company's premises at Customer's arrangement, risk and expense. If the Customer fails to remove them within seven (7) calendar days, the Company may dispose of them in such manner as it sees fit at its absolute discretion at Customer's risk and expense.

## **34. Miscellaneous**

- (a) The rights and remedies confer on the Company under these Conditions shall be cumulative and shall be in addition to and without prejudice to any rights or remedies otherwise available whether at law or in equity to the Company.

- (b) The exemptions, exclusions, and limitations of liability provided for the Company by these Conditions shall apply in any action taken against the Company in accordance with the agreement or tort or any other similar form.
- (c) The waiver by the Company of a breach or default of any of the provisions set out in these Conditions shall not be construed as a waiver of any succeeding breach of the same or other provisions herein nor shall any delay or omission on the part of the Company to exercise or avail itself of any right, power or privilege that it has or may have hereunder operate as a waiver of any breach or default by the Customer.
- (d) If any provision of these Terms and Conditions is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force. If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, that provision shall apply with whatever modification is necessary to make it valid, enforceable and legal.
- (e) Each party acknowledges and agrees that, in entering into the agreement under these Terms and Conditions, it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to these Terms and Conditions or not) relating to the subject matter of the agreement, other than as expressly set out in the agreement.
- (f) The Company reserves the right to revise, delete, amend, supplement any of the Terms and Conditions herein and/or append any other terms and conditions as integral part of these Terms and Conditions including its standard rates and tariffs, from time to time. Such changes shall be effective if no objection in writing is made by the Customer within fourteen (14) clear calendar days after the receipt of the notice in writing from the Company.
- (g) The Customer shall not, without the prior written consent of the Company, assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations in these Terms and Conditions.

- (h) The Company may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations in these Terms and Conditions.
- (i) The Customer hereby gives the irrevocable authority to the Company to obtain any credit information related to the Customer from any source deemed appropriate to verify the Customer's history and/or financial position.
- (j) The agreement under these Terms and Conditions is for the benefit of the parties to it and (where applicable) their successors and permitted assigns and is not intended to benefit, or be enforceable by, anyone else.
- (k) Notwithstanding any provisions to the contrary contained herein, Services in relation to the Goods of a fragile nature, antiques, works of art and paintings, precious stones or metal objects, bank notes and jewelry, any documents and cards, computer data on any medium, perishable Goods, dangerous Goods, live animals and plants, and/or any other Goods of high value are performed by the Company entirely at the Customer's risk without any liability whatsoever to the Company, including without any liability arising from the negligence, except wilful negligence, of the Company or its agents or subcontractors.
- (l) If there is any difference between the English language text of these Terms and Conditions and the Myanmar language text for all purposes, the English text shall be conclusive.

## **Part E - Legal Matters**

### **35. Law and Jurisdiction**

- (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.

- (c) Except as may be otherwise agreed and subject to the Law of the Republic of the Union of Myanmar, any and all claims, demands, causes of action, disputes, controversies and other matters in question arising out of or relating to any Agreement between the Company and the Customer, including questions regarding existence, effect, validity, breach, or termination of the Agreement between the Company and the Customer that the Parties do not resolve amicably within a period of thirty (30) days from the date a Party first notifies the other of a matter requiring resolution, shall be referred to and finally resolved by arbitration proceedings at the Myanmar Arbitration Centre of the Republic of the Union of Myanmar Federation of Chambers of Commerce and Industry (UMFCCI) in Myanmar, in accordance with the provisions of the Myanmar Arbitration Law of 2016 (the MAL), the reference to which shall include the same as from time to time amended or re-enacted or replaced or substituted after the date the Agreement is executed.
- (d) With respect to the arbitration in Myanmar in accordance with the MAL, there shall be three (3) arbitrators. Each Party shall appoint one (1) arbitrator within thirty (30) days of the filing of the arbitration, and the arbitrators so appointed shall select an umpire within thirty (30) days after the last of the two (2) arbitrators have been appointed. If a Party fails to appoint its Party-appointed arbitrator or if the Party-Parties' appointed arbitrators cannot reach an agreement on the selection of an umpire within the applicable time period, any Party may apply to the court for the appointment of such said arbitrator or an umpire, as applicable.
- (e) In any such arbitration proceedings, the award of the majority of the arbitrators shall prevail, provided that if the arbitrators are equally divided in their opinions, the award of the umpire shall prevail. The language to be used in the arbitration shall be the Myanmar language and the resulting arbitral award shall be final and binding on the Parties, and judgment upon such award may be entered in any court having jurisdiction thereof.