

CONDITIONS OF BUSINESS
OF
FAT KEE LOGISTICS LIMITED

* * *

CONTENTS

<u>PART</u>	<u>PAGE</u>
I. APPLICATION	1
II. DEFINITIONS	2
III. GENERAL CONDITIONS	
A. OBLIGATIONS OF CUSTOMER	5
B. SPECIAL AND DANGEROUS GOODS	5
C. GENERAL INDEMNITIES	6
D. RECEIPT	8
E. DELIVERY AND DISPOSAL	8
F. INSPECTION	9
G. CONTRACTORS AND SUBCONTRACTORS	9
H. LIABILITY	10
I. CHARGES	13
J. LIEN	13
K. TIME LIMIT	13
L. MISCELLANEOUS	14
M. JURISDICTION AND LAW	14
IV. SERVICES FOR CONTAINER TERMINAL AND STEVEDORING	
A. ARRIVAL OF VESSELS	15
B. BERTHING OF VESSELS	15
C. CARGO OPERATION	16
D. TERMINAL OPERATION	17
E. REEFER CONTAINERS	19
V. SERVICES FOR DRAYAGE OF CONTAINERS AND GOODS	20
VI. SERVICES FOR STORAGE OF EMPTY CONTAINERS AND REPAIR OF CONTAINERS	21
VII. SERVICES FOR CONTAINER FREIGHT STATION	22
VIII. SERVICES FOR STORAGE OF GOODS (GODOWN STORAGE)	23

PART I

APPLICATION

- A. All services of the Company, whether gratuitous or not, are subject to:
- (1) the provisions of Part III entitled General Conditions and, to the extent applicable, Parts IV, V, VI, VII and VIII of these Conditions of Business, and
 - (2) the provisions of the Company's or any other applicable contracts or tariffs, if any.
- B. The following provisions shall be paramount insofar as such provisions are inconsistent with Part III of these Conditions of Business:-
- (1) the provisions of Part IV of these Conditions of Business, to the extent that the Company undertakes the services of a Container Terminal, stevedoring or barging, and any services connected therewith.
 - (2) the provisions of Part V of these Conditions of Business, to the extent that the Company provides the services of drayage of Containers and Goods and any services connected therewith.
 - (3) the provisions of Part VI of these Conditions of Business, to the extent that the Company provides the services of cleaning, maintenance, repair or storage of Containers and any services connected therewith.
 - (4) the provisions of Part VII of these Conditions of Business, to the extent that the Company undertakes the services of a Container Freight Station and any services connected therewith.
 - (5) the provisions of Part VIII of these Conditions of Business, to the extent that the Company undertakes the services of a Godown and any services connected therewith.
- C. (1) Insofar as these Conditions of Business are inconsistent with the provisions of any applicable contracts or tariffs, unless such contracts or tariffs state otherwise, these Conditions of Business shall be paramount.
- (2) The terms and conditions set out herein are in force and applicable at the time of publication and the Company reserves the right to amend such terms and conditions from time to time.

PART II
DEFINITIONS

- A. "AUTHORITY"
Any duly constituted legal or administrative person, acting within its legal powers and exercising jurisdiction within any nation, state, municipality, port or airport.
- B. "COMPANY"
Fat Kee Logistics Limited, a private company duly incorporated in Hong Kong.
- C. "CONDITIONS OF BUSINESS"
The terms and conditions contained herein and any amendments made thereto from time to time.
- D. "CONTAINER"
Any container, flexitank, trailer, transportable tank, flat, pallet or any article of transport used to carry or consolidate goods and any equipment ancillary thereto and includes all Goods or contents carried within by such equipment.
- E. "CONTAINER FREIGHT STATION" OR "CFS"
Any warehouse or place so designated by the Company for the purposes of consolidation or deconsolidation of Goods into or from Containers.
- F. "CONTRACTOR"
Any person, firm or company who directly or indirectly enters into any relationship with or employed by the Company to provide services for and on behalf of the Company.
- G. "CUSTOMER"
Any person, firm or company who directly or indirectly enters into any relationship with the Company to which the Company provides services and includes shippers, exporters, importers, consignors, consignees, forwarding agents, consolidators, storers, lessors and owners of Containers, Lines, shipping agents and container terminals.
- H. "DANGEROUS GOODS"
Dangerous Goods as defined by the Dangerous Goods Ordinance in Hong Kong and all the amendments thereto and include Goods which are or may become of a dangerous, inflammable, radio-active or damaging nature and Goods likely to harbour or encourage vermin or other pests.
- I. "DUTIABLE COMMODITIES"
All dutiable Goods as defined by the Dutiable Commodities Ordinance of Hong Kong.

- J. "GODOWN"
Any warehouse or place so designated by the Company for the purpose of storage of Goods.
- K. "GODOWN WARRANT"
Any warrant issued by the Company in respect of the Goods specified thereon.
- L. "GOODS"
Any cargo and its packaging in respect of which the Company provides or is requested to provide a service.
- M. "GOODS OF HIGH VALUE"
Any bullion, precious stones, bank notes or coins, bonds, negotiable instruments or securities, cigarettes, spirits, precious metal objects, jewellery, valuable works of art and bloodstock.
- N. "LINE"
Any person including without limitation shipping companies, shipping agents, shipowners and charterers having any interest in a Vessel.
- O. "OPERATOR"
Any person who directly or indirectly enters into any contract, agreement with the Company in relation to the transport, storage or distribution of Containers or Goods or any matter connected therewith and includes without limitation exporters, importers, consignors and consignees and may include a person who is a Line.
- P. "OWNER"
Includes any owner, shipper and consignee of Containers or Goods and any other person who is or may become interested in the Containers or Goods and anyone acting on their behalf.
- Q. "REEFER CONTAINER"
Any Container designed or used for transportation of refrigerated cargo.
- R. "STORAGE DELIVERY ORDERS"
Any orders upon the Company's standard form issued by the holder of a Godown Warrant requiring the Company to deliver a specified part of the Goods specified on the Godown Warrant to be delivered to the person or persons named on the order.
- S. "SUBCONTRACTOR"
Any person, firm or company who directly or indirectly enters into any relationship with or employed by a Contractor to provide services for and on behalf of the Company.

T. "TERMINAL"

Any place representing itself as a terminal or depot of Goods or Containers including those terminals operated by the Company.

U. "VEHICLE"

Any motor vehicle (including but not limited to any lorry, van, trailer or car) which enters the Company's depot to deliver or collect any goods or container.

PART III

GENERAL CONDITIONS

A. OBLIGATIONS OF CUSTOMER

- (1) The Customer contracts and agrees with the Company on behalf of himself and as agent for all persons who have or may acquire any proprietary, possessory or other rights in respect of Goods, Containers or Vehicles to be bound by the terms of these Conditions of Business and by the terms of any applicable tariff and warrants that he has the authority of all such persons to contract and to agree as aforesaid.
- (2) The Customer shall give sufficient and executable instructions.
- (3) The Customer warrants that all information given to the Company (including, but not limited to, weight, content, measure, quantity, condition, marks, numbers and value) is complete and correct and that the Goods and Containers are labelled in compliance with all laws, regulations and requirements which may be applicable.
- (4) The Customer undertakes to supply the Company with any information concerning the nature of the Containers or the Goods and their packaging as the Company may reasonably request.
- (5) The Customer warrants and undertakes to the Company that:
 - (a) at the time of delivery the Goods or Containers are not overloaded or improperly loaded and is not in any other respect unsafe for handling or storage; and
 - (b) the Goods or Containers do not contain any dangerous or inflammable goods, unless specific notice in writing has previously been given to the Company.

B. SPECIAL AND DANGEROUS GOODS

- (1) Unless otherwise previously agreed in writing, the Customer undertakes that no Dangerous Goods shall be delivered to the Company and that the Company shall not be caused to deal with or handle such Goods.
- (2) If any Dangerous Goods in the opinion of the Company or any Authority constitute a risk to other goods, property, life or health such Goods may without notice be destroyed or otherwise dealt with at the sole discretion of the Company and at the risk and expense of the Customer.

- (3) The Customer undertakes not to contravene any of the provisions of the Dangerous Goods Ordinance and the amendments thereto. If the Company agrees to accept Goods or Containers containing Dangerous Goods for carriage such Goods or Containers must be accompanied by a full declaration of the nature and contents and that the contents must be properly and safely packed or stowed.
- (4) (a) Unless otherwise previously agreed in writing, the Customer undertakes that no Containers or Goods requiring temperature control shall be delivered to the Company and that the Company shall not be caused to deal with or handle such Containers or Goods.

(b) If the Company agrees to handle Containers or Goods which require temperature control, the Customer undertakes to give written notice of the nature of the Goods and particular temperature range to be maintained and that the Containers have been properly precooled or preheated as appropriate, that the Goods have been properly stuffed in the Container and that its thermostatic controls have been properly set.
- (5) The Customer shall inform the Company in writing in advance all particulars relating to Dutiable Commodities prior to collection by the Company.
- (6) The Company shall not be bound to accept Goods of High Value or Containers containing Goods of High Value or which require special care or handling. The Customer shall give to the Company at least 96 hours' prior written notice of the nature and value of the Goods or Containers and their intended delivery. If any Goods of High Value are transported by the Company then such Goods shall at all times be at the risk of the Customer and the Company shall not be liable for any loss or damage to such Goods except to the extent limited in these Conditions of Business.
- (7) If the Customer is in breach of any of the provisions herein the Goods or Containers may without notice be refused receipt by the Company, destroyed or otherwise dealt with at the sole discretion of the Company and at the risk and expense of the Customer.

C. GENERAL INDEMNITIES

- (1) The Customer shall defend, indemnify and save harmless the Company against all loss, damages, costs and expenses to the extent arising from:
 - (a) any breach of the Customer's undertakings or warranties;
 - (b) the act or omission of the Customer or Owner or any person acting on their behalf;
 - (c) the Company complying with the instructions given by or on behalf of the Customer or Owner;

- (d) the Company complying with the orders of an Authority with regard to the Containers or Goods;
 - (e) The handling, loading, stowage or unloading of the Containers or Goods by the Customer or Owner or any person acting on their behalf;
 - (f) the nature of the Containers or Goods;
 - (g) the defective condition of or overweight Containers or Vehicles; or
 - (h) outlay or disbursements made by the Company on behalf of the Customer.
- (2) The Customer shall defend, indemnify and save harmless the Company against all duties, taxes and fines in respect of the Containers or Goods howsoever arising.
- (3) (a) The Customer's bill of lading or other contracts of carriage, handling or storage shall include a provision prohibiting the making of any claim against the Company, its servants or agents, and a provision that the Company, its servants and agents shall have the benefit of any provisions in such contract of carriage, handling or storage excluding or limiting the liability of the Customer.
- (b) The Customer undertakes that no claim shall be made against any servant or agent of the Company which imposes or attempts to impose upon any of them any liability whatsoever in connection with the Goods, Containers or Vehicles, if any such claim should nevertheless be made, to indemnify the Company against all consequences thereof.
- (c) Without prejudice to the foregoing, every servant or agent of the Company shall have the benefit of all provisions herein, as if such provisions were expressly for their benefit. In entering into any contract the Company, to the extent of those provisions, does so not only on his behalf but as agent and trustee for such servants and agents.
- (d) The Customer shall defend, indemnify and save harmless the Company from and against all claims, costs and demands whatsoever and by whomsoever made or preferred in excess of the liability of the Company under the terms of these Conditions of Business and without prejudice to the generality of this clause this indemnity shall cover all claims, costs and demands arising from or in connection with the negligence of the Company, its servants and agents.
- (e) Agent includes direct and indirect Subcontractors and their respective servants and agents.

D. RECEIPT

- (1) (a) Goods, Containers or Vehicles are not received by the Company until the delivering driver has reported to the Company's reception or registration office or area and in addition the Company has agreed to receive the Goods, Containers or Vehicles.

(b) The Company may refuse to receive or unload any Goods, Containers or Vehicles if the Company is not satisfied that arrangements have or will be made for the removal of such Goods, Containers or Vehicles.
- (2) The Company reserves the right to refuse to receive or to handle or to store any Goods or Containers when in the opinion of the Company:
 - (a) no satisfactory arrangement or clear instructions have been made with the Company; or
 - (b) there are any circumstances which preclude or hinder the safe handling of Goods or Containers.

In such circumstances where the Goods or Containers are in the Company's possession, the Customer shall upon notice, verbal or written, forthwith remove the Goods or Containers or procure the removal thereof or otherwise deal with the same to the satisfaction of the Company.

- (3) The Company, its servants, agents or Contractors shall, if so required, sign a document acknowledging the receipt of Goods or Containers; but such document shall not be evidence of the condition or correctness of the declared nature, quantity or weight of the consignment at the time it is received by the Company, its servants, agents or Contractors.

E. DELIVERY AND DISPOSAL

- (1) If any Goods, Container or Vehicle is not removed from the Company's premises within 14 days of the Company having given notice in writing to the Customer, the Company shall be entitled to remove or dispose of such Goods, Container or Vehicle at the sole discretion of the Company and at the risk and expense of the Customer.
- (2) If at any time any Goods or Container in the opinion of the Company or any Authority constitute a risk to other Goods, property, life or health such Goods or Container may without notice be destroyed or otherwise dealt with at the sole discretion of the Company and at the risk and expense of the Customer.

- (3) (a) Instructions contained in the Customer's bill of lading, waybill, delivery order, or other documents shall entitle the Company to deliver to the bearer thereof notwithstanding that such bill of lading, waybill, delivery order, or other document provides for delivery to a named party or to his order. The Company is entitled to assume that the person presenting such bill of lading, waybill, delivery order or other document is the person lawfully entitled to take delivery. The Company is not required to verify signatures appearing on such bill of lading, waybill, delivery order, or other document.
- (b) The issue by the Customer of a delivery order in respect of any Container or Goods shall constitute a warranty to the Company by the Customer that the bearer thereof is lawfully entitled to the Container or Goods and the Customer shall indemnify the Company against any damages, costs or expenses incurred by the Company directly or indirectly arising from any delivery made to the bearer of such delivery order.
- (4) The Company shall endeavor to ensure the correct tallying of Goods and Containers and the correct delivery to consignees and to the Vessel of all Goods and Containers. The Company shall not be responsible or liable for any errors in the tallying or delivery of any Goods or Containers which are insufficiently, incorrectly or otherwise not properly marked.

F. INSPECTION

- (1) The Company shall inform the Customer of any discrepancies to Goods or Containers ascertained on receipt by or delivery from the Company and which are apparent upon reasonable inspection without opening up any packaging of the Goods.
- (2) The Company shall not be responsible or liable for failing to note, on receipt of any Goods or Container, any broken seals or damage to the Goods or Container.

G. CONTRACTORS AND SUBCONTRACTORS

- (1) The Company may employ the services of any Contractor to provide services to any Customer. Any such Contractor shall have the right to subcontractor the services.
- (2) All Contractors and Subcontractors of the Company shall, except provided otherwise, indemnify and save harmless the Company against any damages, costs, loss or claims arising out of or in consequence of the services provided to the Company by the Contractors or Subcontractors.
- (3) The Company shall not be liable for any costs, damages or expenses as a result of any accident or injury to any employees of the Contractors or Subcontractors nor shall the Company be liable for any compensation or costs required to be paid by law to any employees of the Contractors or Subcontractors.

- (4) All Contractors and Subcontractors of the Company shall insure against all liability which may be incurred by them in performing their services to the Company and shall continue such insurance so long as services are provided to the Company.
- (5) If any Contractors and Subcontractors shall fail to effect and keep in force the insurance referred to herein or any other insurance which they may be required to effect under the terms of any contract then the Company may effect and keep in force any such insurance and pay such premium or premiums as may be necessary for that purpose and deduct the amount so paid by the Company from any moneys due or which may become due to the Contractors or Subcontractors or recover the same as a debt due from the Contractors or Subcontractors.
- (6) In the event any persons employed by the Contractors or Subcontractors suffer any personal injuries and whether or not there would be a claim for compensation, the Contractors or Subcontractors shall, without delay, notify the Commissioner of Labour in such form as the Commissioner of Labour may require and shall forward two copies of such notification to the Company.

H. LIABILITY

- (1) The Company shall not be liable for any loss, damage, delay, duty, tax or fine, indirect or consequential loss, non-performance of any obligation, misdelivery, misdirection, costs, expenses of whatsoever nature and howsoever caused except as specified in clause (2) below.
- (2) Subject to the exclusions of liability in clause (4) and any other terms in these Conditions of Business, to the extent that it is proved that the claim arises from the negligence of the Company, its servants, agents or Contractors, the Company shall be liable for the type of loss or damage set out below subject to the financial limits stated therein.
 - (a) Physical loss of or damage to Goods, the least of:
 - (i) the value of the Goods lost;
 - (ii) the reasonable cost of repair in case of damage;
 - (iii) USD2.00 per kg of the Goods lost or damaged.
 - (b) Misdirection of the Goods, the least of:
 - (i) the cost of transporting the Goods to the correct destination by the mode of transport that would have applied in the absence of such misdirection less the cost that would have been incurred in transporting the Goods to the correct destination in the absence of such misdirection;

- (ii) the value of the Goods misdirected;
 - (iii) USD2.00 per kg of the Goods lost or damaged.
 - (c) Physical loss of or damage to the Customer's owned or leased Containers or Vehicles, the lower of:
 - (i) the value of the Container or Vehicle; and
 - (ii) the reasonable cost of repair in the case of physical damage;
 - (d) Physical loss of or damage to property of any form other than that in sub-clauses (a) to (c), the least of:
 - (i) the value of the property lost;
 - (ii) the reasonable cost of repair in the case of damage; and
 - (iii) USD75,000.00 each event or events arising from a common cause.
 - (e) In no event shall the Company's liability under one or more of sub-clauses (a) to (d) exceed USD250,000.00 per event or events arising from a common cause.
- (3) For the purposes of clause (2) :
- (a) the value of Goods is the invoice value plus freight and insurance if paid plus any Customs duty or tax incurred on the Goods in respect of their carriage and not recoverable from any Authority or, in the absence of such value, is the market value at the place where the Company handled the Goods;
 - (b) the value of the Customer's Container or Vehicle is its lease value if leased by the Customer and if owned by the Customer it is the market value at the place where the loss or damage occurred; and
 - (c) the value of property under sub-clause 2(d) is the market value at the place where the loss or damage occurred.
- (4) The Company shall not have any liability whatsoever for claims arising from:
- (a) the act or omission of the Customer or Owner or any person acting on their behalf;
 - (b) the Company complying with the instructions given by or on behalf of the Customer or Owner;
 - (c) the act or order of any Authority;

- (d) insufficiency of packing or labelling of the Goods or Containers except where such service has been provided by the Company;
 - (e) handling, loading, stowage or unloading of the Goods by the Customer or Owner or any person acting on their behalf;
 - (f) nature of the Goods;
 - (g) defective condition of the Goods or Containers or overweight Containers;
 - (h) riots, civil commotions, strikes, lockouts, stoppage or restraint of labour;
 - (i) fire, flood or storm;
 - (j) breakdown of or failure of any handling equipment of the Company;
 - (k) breakdown of, accident to, failure or interruption of or reduction in the mains electrical supply to the Company and the Company is under no obligation to have available any auxiliary power supply;
 - (l) delay caused by strike, weather, mechanical failure, shortage of manpower, traffic congestion or from any other causes beyond the control of the Company;
 - (m) war, hostilities or confiscation;
 - (n) consequential loss, loss of market or profit;
 - (o) fraud perpetrated by any persons; or
 - (p) any causes which the Company could not prevent by the exercise of reasonable diligence.
- (5) All persons who enter upon the Company's premises do so at their own risks and on the condition that the Company shall be exempt from any liability arising out of any detention, loss, damage or injury of any kind.
- (6) Save and except where required by law, the Company shall be under no obligation whether by contract or otherwise to permit any person to enter upon the Company's premises and the Company shall have the right to restrict or prohibit the entry of any person or persons onto the Company's premises. The Company also reserves the right to remove any person from the Company's premises.

I. CHARGES

- (a) Unless otherwise agreed in writing, the Customer shall pay to the Company as agreed all sums immediately when due without deduction or deferrals on account of any claim, counterclaim or set-off.
- (b) All charges shall be payable by the Customer without prejudice to the Company's rights to claim against any other person for payment.
- (c) When the Company is instructed to collect freight, duties, charges or other expenses from any person other than the Customer, the Customer shall be responsible for the same and on receipt of demand and evidence of non-payment by such other person shall immediately pay such charges to the Company.
- (d) On all amounts overdue to the Company, the Company shall be entitled to charge interest calculated at 2 per cent per month or such other rate of interest as the Company shall dictate from time to time during the period that such amounts are overdue.
- (e) Without prejudice to any other right or remedy the Company may have, the Company shall be entitled to suspend any services being or to be provided to the Customer in the event of any breach by the Customer of these Conditions of Business including without limitation non-payment of any amount due from the Customer to the Company.

J. LIEN

- (1) The Company shall have a particular and general lien on all Goods, Containers, Vehicles and documents relating thereto in its possession for all sums due from the Customer and on giving 28 days written notice to the Customer, the Company shall be entitled to sell or dispose of such Goods, Containers, Vehicles or documents at the expense of the Customer and apply the proceeds in payment of such sums. After the Company has given notice of sale under the lien, the Company shall not be liable for any loss or damage whatsoever and howsoever caused. Any sale of such Goods, Containers, Vehicles or documents may be conducted by private treaty, public auction or in such manner as the Company shall determine.

K. TIME LIMIT

- (1) The Company shall be discharged of all liability:
 - (a) in respect of damage, unless the Company has been given the opportunity to survey such damage.

- (b) in respect of all claims, unless within 14 days of the occurrence giving rise to the claim, written notice of the nature and amount of claim is given to the Company; and
- (c) in respect of all claims, unless within 1 year of the occurrence giving rise to the claim, legal proceedings are brought against the Company in the proper forum and proper notice thereof is given to the Company.

L. MISCELLANEOUS

- (1) Any notice served by the Company by post shall be deemed to have been given on the third day following the day on which it was posted to the address of the recipient of such notice last known to the Company.
- (2) The defences and limits of liability provided for by these Conditions of Business shall apply in any action against the Company whether such action be founded in contract or tort.
- (3) If any of the terms of these Conditions of Business are compulsorily repugnant to or conflict with any legislation or ordinance in Hong Kong or any other jurisdiction, then those terms which are repugnant or in conflict shall be severed and the remaining terms shall remain applicable and effective.
- (4) No servants or agents of the Company shall have power to waive or vary any of the terms herein unless such waiver or variation is in writing and is specifically authorised or ratified in writing by an authorised person of the Company who has the actual authority of the Company so to waive or vary.
- (5) Any requests for clarification of these Conditions of Business or their application to any given circumstances must be made in writing to the Company.
- (6) Any word or phrase in the singular shall have a meaning, where applicable, in the plural and vice versa.

M. JURISDICTION AND LAW

- (1) These Conditions of Business and any claim or dispute arising out of or in connection with the service of the Company shall be subject to Hong Kong S.A.R. law and the exclusive jurisdiction of the courts of Hong Kong S.A.R.

PART IV

SERVICES FOR CONTAINER TERMINAL AND STEVEDORING

A. ARRIVAL OF VESSELS

- (1) The Line shall confirm the final estimated time of arrival of a Vessel in writing to the Company not less than 36 hours before arrival and in the case of any Vessel scheduled to arrive on a Monday before noon, not later than the preceding Saturday noon.
- (2) Not less than 96 hours before the estimated arrival of a Vessel or within such time as shall be mutually agreed, the Line shall supply to the Company such particulars in writing of the Containers or Goods to be discharged from or loaded onto that Vessel as the Company may require including, but without limitation, information relating to Dangerous Goods and Dutiable Commodities contained in or intended to be contained in any Container, stowage plans or any other relevant particulars.

B. BERTHING OF VESSELS

- (1) Berthing or mooring shall be carried out in accordance with such instructions as may be given by the Company from time to time at the berth allotted to the Vessel by the Company. The Line undertakes to comply with all instructions given by the Company as if the same were incorporated herein.
- (2) Vessels are to be berthed alongside the Terminal by the master and crew of the Vessel. It is the responsibility of the Line to satisfy itself that the berth allotted by the Company is suitable, adequate and safe for the Vessel. Vessels approaching, leaving, berthing or mooring at the Terminal and whilst alongside do so at their own risk and at the risk of the Line. The Company does not give any warranty, whether by indicating or allotting a berth or otherwise, that the Vessel will not ground while approaching, leaving, or resting at the berth indicated or that there are no obstructions on the sea bed or that the berth is otherwise adequate for the Vessel.

- (3) The Company is not responsible for any defects whether patent or latent in any bollards, posts or fendering to which wire hawsers or ropes are attached from the Vessel nor shall the Company be responsible for the insecure or improper mooring of any Vessel, or any defective mooring or appliance, nor for any damage or consequence arising therefrom. It is the responsibility of the Line to satisfy itself that the bollards or posts are sufficient to provide safe berthing for the Vessel having regard to its size, the currents and prevailing weather and other conditions. The Line hereby agrees to indemnify and save harmless the Company against any damage to the Terminal equipment, bollards, posts or fendering arising from the act of berthing, unberthing or mooring its Vessels or while the Vessel is alongside the Terminal, and in respect of any damage to lighters arising from berthing, unberthing or mooring alongside such lighters.
- (4) It is the responsibility of the Line to provide all gangways with suitable lanterns or lights at both ends from sunset to sunrise, to supply all necessary tackle for hoisting, lashing and securing such gangways, to do everything necessary to make such gangways securely fast, and to ensure that the Vessel maintains position alongside its mooring. Damage to gangways and installations caused by slack or inadequate mooring is the responsibility of the Line, and the Line hereby agrees to indemnify and save harmless the Company for all damage caused thereby.
- (5) The Line shall be responsible for all dockage, wharfage and other charges incurred by its Vessels using the Terminal, in accordance with the Company's agreed tariff. No claim or counterclaim by the Line shall be made the reason for deferring or withholding of payment of money due to the Company.
- (6) The master of any Vessel alongside the Terminal shall shift or vacate his berth without delay on being requested to do so by an official of the Company. On a typhoon signal being hoisted or warning of an approaching typhoon being broadcast the master of every Vessel alongside the Terminal shall immediately prepare his Vessel in readiness to leave his berth if and when so instructed by and official of the Company. The Company shall not be responsible for any loss, damage or expense caused to the Line directly or indirectly as a result of such instructions.

C. CARGO OPERATION

- (1) The Company shall endeavour to commence cargo operation upon arrival of a Vessel as soon as practicable but shall not be responsible for any damages or expense caused by any delay.
- (2) The Company shall not be responsible to the Line whether for damages or loss of profits arising from any detention or delay of a Vessel howsoever caused including but without limitation, any delay in discharging or loading Containers or Goods.

- (3) The Company may from time to time issue to the Line in writing any reasonable rules and regulations governing procedures to be followed in loading and unloading Vessels and the Line shall comply with all such rules and regulations of which it has received notice.
- (4) All unpaid dues and charges for Containers or Goods discharged from any Vessel shall be paid by the Line.
- (5) The Line warrants that all equipment on board a Vessel or supplied by the Vessel including without limitation cranes, hatch covers, lashing materials and stacking cones are in good working condition free from defects and the Line shall indemnify and save harmless the Company from all damages, loss or expenses arising from any breakdown, malfunction or defects in the equipment.

D. TERMINAL OPERATION

- (1) Containers or Goods will be allowed a period of free storage as specified in the applicable tariff. If any Containers or Goods are not collected from the Terminal within such free storage period, the Line shall give instructions to the Company for unpacking, storage and disposal thereof and in default of which the Company may store and dispose the same at the sole risk and expense of the Line.
- (2) Where a Line requests or instructs the Company to release, deliver, accept or otherwise deal in any way with any Container or Goods in respect of an Operator, the Line shall procure the observance by such Operator of these Conditions of Business and the Line, unless or until such Operator enters a separate agreement with the Company in respect of the Container or Goods incorporating these Conditions of Business, shall:
 - (a) contract (and shall be deemed for all purposes to have so contracted) with the Company on these Conditions of Business on behalf of such Operator as its agent; and
 - (b) indemnify the Company against any claim, damage, loss or expense suffered or incurred by the Company arising from any breach or default by such Operator of these Conditions of Business or arising from any want of authority on the part of the Line to act as agent of such Operator as aforesaid.
- (3) The Line and Operator shall ensure that all Containers or Goods shall be delivered to the Company for acceptance at the designated transfer area at the Terminal or at such place as the Company shall designate from time to time for the receipt of the same.
- (4) The Company shall have no responsibility or liability whatsoever in relation to any Container or Goods until the same has been delivered to the area designated and duly accepted by the Company.

- (5) Prior to delivery of any Container or Goods at the Terminal, the Operator shall furnish to the Company such particulars thereof, including without limitation all applicable weights and measurements, as the Company may reasonably require. The Operator hereby warrants to the Company the accuracy and adequacy of all such particulars and understands that the Company will rely on them.
- (6) The Line and Operator covenants that each Container delivered to the Company shall be in good order and repair and the Company shall be entitled to assume that each Container is in such condition. The Company shall not, by reason of the acceptance of any taken to warrant or accept responsibility for, the condition, security, fitness or otherwise of the Container, its seal or of any Goods contained therein.
- (7) Containers received at the Company's premises shall be assumed to be weather-proof and will be stored in the open. The Company shall under no circumstances be responsible for any damage to any Container or its contents caused directly or indirectly by such storage, including without limitation damage caused by rain, typhoon, tempest, lightening, fire or other peril.
- (8) The Company reserves the right to refuse to receive or handle any Container or Goods in its absolute discretion. In such circumstances, where any Container or Goods are already located at the Terminal the Line shall, if requested by the Company, forthwith remove or procure the removal thereof or otherwise deal with the same at the sole risk and expense of the Line as directed by the Company.
- (9) Where in the opinion of the Company any damaged or defective Container or Goods are likely to damage or contaminate other Containers or Goods, the Company may require the Line or the Operator to remove the same from the Terminal forthwith. In default, the Company may remove the same at the Line's expense and risk to such other storage place as the Company may decide. Where in the opinion of the Company no alternative place of storage is reasonably available, the Company may upon giving notice dispose of the Goods.
- (10) Unless notice of loss or damage and the general nature of such loss or damage are given in writing to the Company before or at the time of removal of any Container or Goods from the custody of the Company, and the loss or damage is agreed in writing after a joint inspection with the Company, such removal shall be conclusive evidence of delivery in good order and condition of the Container or Goods.

E. REEFER CONTAINERS

- (1) Specific arrangements must be made with the Company for the acceptance and delivery of any Reefer Containers and, in any event, instructions in writing shall be given to the Company at least 48 hours in advance of delivery. No Reefer Containers shall be delivered to the Company until the Company has accepted such instructions in writing. The same arrangements must also be made for any Reefer Containers to be discharged from a Vessel.
- (2) If and to the extent that such instructions are accepted by the Company, the Company shall check and report upon temperatures of such Reefer Containers at such times as shall be agreed.
- (3) If so instructed, Reefer Containers shall, within a reasonable time after discharge or delivery, be connected by the Company to the power supply but there shall be no obligation upon the Company to maintain any auxiliary power and the Company shall under no circumstances be responsible for or incur any liability in respect of the failure, discontinuance or interference from time to time in the power supply or for any failure to give notice of any such circumstance for any reason whatsoever.
- (4) If the Company is requested by the Line or Customer to open or unpack any Reefer Container for any purpose whatsoever, the Company shall not be responsible for any deterioration of its contents or for any contamination to other Goods. The Company reserves the right, but incurs no obligation, to close, connect or reconnect the power supply, repack or otherwise deal with any Reefer Container or its contents but entirely at the expense of and at the sole risk of the Line or Customer.

PART V

SERVICES FOR DRAYAGE OF CONTAINERS AND GOODS

- A. Time required by the Company to provide its services is not fixed or limited but depends on circumstances and generally accepted practice of the trade with allowable delay caused by strike, weather, mechanical failure, shortage of manpower, traffic congestion or from any other causes beyond the control of the Company.
- B. The Company shall be reimbursed by the Customer for any expenses such as overtime storage, lift-on, lift-off or gate charges or any other charges which are considered as outlay or disbursement made on behalf of the Customer.
- C. The Customer shall inform the Company in writing in advance all particulars relating to any Dutiable Commodities contained in any Container prior to the collection of the Container by the Company.
- D. The Company shall not be responsible or liable for failure to note, on receipt of any Container, any damage to the Container or broken or false seal not readily apparent.
- E. Transit shall commence when the Container is handed to the Company at the point of collection.
- F. Transit shall end when the Container is tendered at the usual place of delivery stated in the documents unless otherwise previously determined; provided that:
 - (1) if for any reason a Container cannot be delivered or is held by the Company in accordance with instructions from the Customer then transit shall be deemed to be at an end if, after a reasonable time has elapsed, the Customer failed to give further instructions for its disposal; or
 - (2) transit shall be deemed to be at an end when a Container is detained for custom purposes.

PART VI

SERVICES FOR STORAGE OF EMPTY CONTAINERS AND REPAIR OF CONTAINERS

- A. Where the Company provides services for cleaning, maintenance or repair of Containers or storage of empty Containers and any services connected therewith, the Company shall not be liable for any improper performance or non performance of such services, or any consequences whatsoever arising therefrom, except to the extent provided in this Part VI.
- B. (1) The Company's liability shall not exceed the reasonable cost of rectifying the services improperly or not performed by the Company, subject to a limit per Container of that Container's market value.

(2) At the Company's option, the Company may rectify at its own expense the services improperly or not performed. If the Company exercises an option but is not given an opportunity by the Customer to exercise this option, the Company shall not be liable for any costs incurred by the Customer or any other person in rectifying such services.
- C. The Customer undertakes to inspect a Container on redelivery to him or to such other person as instructed. The Company shall not be liable and the Customer shall defend, indemnify and hold harmless the Company against any loss, damages, costs and expenses in respect of or arising from an improper or non-performance of the Company's services which would have been apparent upon reasonable inspection of the Container at the time of redelivery and was not brought to the Company's attention in writing at the time of redelivery. This indemnity is in addition to the indemnities in Part III of these Conditions of Business.
- D. The Company shall be discharged of all liability unless:
 - (1) notice of any claim is received by the Company in writing within 14 days and
 - (2) suit is brought in the proper forum and written notice thereof received by the Company within 1 year, after the date of redelivery of the Container to the Customer or to such other person as is requested.

PART VII

SERVICES FOR CONTAINER FREIGHT STATION

- A. Goods for export shall be brought to the CFS or any other area as may be designated from time to time by the Company for acceptance by the Company. The Company shall only receive or deliver Goods after full covering documentation has been provided to the Company, as required by these Conditions of Business or any contract between the Company and the Customer. The Company's responsibility to the Customer for Goods for export shall commence only when such Goods are delivered by the Customer or consignor to the CFS door or such other part of or place adjacent to the CFS as the Company may designate and notice of acceptance duly given by the Company.
- B. All orders or documents given by the Customer to the Company shall contain at least the following information:
 - (1) Name and address of the principal, owner or agent;
 - (2) Name and address of the consignee and place of destination;
 - (3) Gross weights, volume and number of packages with marks and description of the Goods; and
 - (4) Any other instruction as to the method of packing, collection of charges, expenses, and insurance.
- C. The Company does not and shall not be deemed to warrant to the Customer that in selecting any Container for packing that it has surveyed the same or that the Container is watertight or otherwise fit for Goods to be packed therein.
- D. Goods which have been unpacked from a Container by the Company shall, unless otherwise agreed upon, be allowed three working days free storage at the Terminal. It is the Operator's responsibility to arrange for such Goods to be removed from the Company's premises within such time and the Company may at its option refrain from unpacking goods from a Container until it is satisfied that arrangements for such removal have been made.
- E. When Goods are not collected from the Terminal within the free storage period, the Company reserves the right to warehouse such Goods either at its own premises or elsewhere at the sole risk and expense of the Customer.

PART VIII

SERVICES FOR STORAGE OF GOODS (GODOWN STORAGE)

A. STORAGE

- (1) A Godown Warrant shall be issued for all Goods placed on monthly storage.
- (2) The Company shall endeavour to note upon the Godown Warrant or the excepted cargo list all damage or defects to Goods which may be apparent at the time of transfer to storage but does not warrant the accuracy or the extent of damage or defects so noted.
- (3) The Company does not undertake to store Goods in the Godown or in the area or under the lot number that may be indicated to the storer or stated upon the Godown Warrant and shall have the right, without notice, to change such notification or to remove such Goods to other godowns or areas and to change the lot number thereof. The Company shall also have the right to remove stored Goods to godowns not belonging to or managed by the Company upon giving written notice posted to the storer and the order party (if any) at the addresses shown on the Godown Warrant.
- (4) The Company neither expressly nor impliedly warrants that it holds any of the Goods specified on a Godown Warrant other than such portion thereof as remains undelivered and is shown in the books of the Company to be still in storage. The Company shall not recognize any transfer of right to the Goods held under a Godown Warrant until such transfer has been registered in its books. The Company shall continue to meet Storage Delivery Orders presented or issued by the registered holder of the Godown Warrant until any such transfer is submitted for registration.
- (5) Where Storage Delivery Orders are issued to a third party by the person entitled to Goods according to the Company's books, the Company shall on receipt of such Storage Delivery Order recognize such third party as the person entitled to the Goods referred to therein, and deliver the same to such person.
- (6) Where part of the Goods shown in a Godown Warrant is transferred or delivered pursuant to a Storage Delivery Order then unless otherwise indicated the Company may make such physical division of the Goods as it sees fit. If part of the Goods is damaged, the transferee shall accept all damaged Goods transferred to his name or delivered to him irrespective of the proportion such damaged Goods bears to the whole. The Company shall have the right to assume that all items of Goods have an equal value for the purpose of such division unless otherwise instructed in writing by the storer.

- (7) Storage and other charges are payable at the rates quoted by the Company or at the rate as agreed with the Customer and at the Company's option either:
- (a) On demand;
 - (b) In advance on delivery for storage;
 - (c) At the end of each month for charges due according to the Company's books for storers on general account; or
 - (d) On such other basis as may be determined by the Company.

Should storage or other charges payable remain unpaid for a period of seven days after the same shall have become payable then the Company shall have the right to sell without notice the Goods by public auction or private treaty and to apply the proceeds in discharge of all costs and charges incurred in the sale and in payment of the storage and other charges due to the Company. The Company shall not be required to obtain the best price reasonably obtainable and may recover any deficiency by civil proceedings.

- (8) In the event that a small quantity of undelivered Goods remain under a Godown Warrant the Company may assess a minimum charge for the Goods. The Company may as an alternative give the storer notice to collect and if such Goods is not collected within 28 days of such notice the Company may treat the Goods as abandoned and having no value, any may dispose of the same in its entire discretion without accounting to the storer therefor.
- (9) In addition to, and notwithstanding clause (7) above the Company shall have a lien upon Goods stored or received by the Company or any balance thereof for storage charges and all other expenses and charges that may be due or will become due from the Customer, Owner, depositor or storer of such Goods including a lien for amounts due from the Owner, depositor or storer on general account. Such lien shall in no way be affected either as a result of the Goods being held to the order of a bank or other third party or by sales made by the Customer, Owner, depositor or storer whether such sale has been registered in the Company's books or not, and until all charges and expenses have been settled in full the Company shall be under no obligation to deliver any Goods pursuant to the Godown Warrant or any Storage Delivery order.

B. DELIVERY OF GOODS

- (1) Upon receipt by the Company of any Goods for storage the Customer shall either:
- (a) provide, on the Company's standard form, specimen signature(s) of its duly authorised representative(s) (with or without chops); or

- (b) nominate to the Company such authorised representative a specimen of whose signature has previously been delivered to the Company;
- (2) In the event that any Goods are delivered to the Company and are to be stored to the order of a bank, the Customer shall in addition to the specimen signature of its authorised representative procure a specimen signature from the bank (with or without chops) for its authorised representative.
- (3) Failure of any party concerned to supply to the Company the required specimen signatures shall release the Company from any obligation to verify the signatures and chops purporting to have been made by or on such party's behalf.
- (4) The Company shall deliver Goods stored by it only on surrender to the Company of the appropriate Godown Warrant or a Storage Deliver Order issued under such Godown Warrant signed by the duly authorised representative of the Customer storing the Goods and where applicable the bank to whose order the Goods is stored.
- (5) Delivery of the Goods shall be carried out by the Company as follows:
 - (a) The Company will compare the signatures on documents purporting to be issued, signed or countersigned by such party against the specimens of such signatures and chops that have been supplied to and accepted for record by the Company;
 - (b) The Company shall be entitled to deliver the Goods if upon such comparison the signatures and chops appear to the Company to be genuine;
 - (c) The Company shall not be liable to any party whatsoever for any loss of or damage to the Goods arising from the misdelivery thereof in consequence of any error of judgment or negligence or fraud of any of its employees in the making of the said comparison or the drawing of any conclusion therefrom as to the authenticity of the said signatures or chops. The production of such delivery document or a copy thereof verified as aforesaid shall be conclusive proof that the Goods have been properly delivered by the Company.
- (6) Instructions contained in Storage Delivery Orders and other documents to deliver to a named party (other than the party name in the Godown Warrant) or order shall deemed to be instructions to deliver to the bearer of such Storage Delivery Order or document. The Company will not verify any signatures appearing on such documents other than those of the storer's authorised representative. Bills of lading and Storage Delivery Orders issued or endorsed to the order of a bank must also be countersigned by the bank before delivery will be made to the bearer. Where Goods are so consigned to the order of a bank, the Company will compare the authorised signatures of the bank.