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SHIPPING

STANDARD TERMS AND CONDITIONS

(APPLICABLE WEF 1st April 2025)

**Part I: General**

**Definitions**

1. Unless otherwise stated, in these Conditions:

- a. **Authority** A duly constituted legal or administrative person, acting within its legal powers and exercising jurisdiction within any nation, state, municipality, port or airport.
- b. **Carriage** means the whole or any part of the operations and services of whatsoever nature undertaken by the Company in relation to the Goods, including but not limited to the loading, unloading, storage, warehousing and handling of the goods.
- c. **Company** means Orchid Shipping Pvt. Ltd.
- d. **Container** includes any vehicle, container, flat, pallet, trailer, transportable tank and similar items used for the Consolidation of goods as well as mobile plant and timber packages.
- e. **Customer** means any person, whether themselves an agent or a principal, at whose request or on whose behalf the Company provides a service.
- f. **Dangerous Goods** includes goods that are or may become of a dangerous, inflammable, radio-active or damaging nature, goods liable to taint or affect other goods and goods likely to harbour or encourage vermin or other pests.
- g. **Goods** includes the cargo and container not supplied by or on behalf of the Company, in respect of which the Company provides a service.
- h. **Hague Rules** means the provisions of the International Convention for the Unification of certain rules Relating to Bills of Lading signed at Brussels on 25th August 1924.
- i. **Instructions** means a statement of the Customers specific requirements.
- j. **Owner** includes the owner, shipper and consignee of the Goods and any other Person who has or may have a legal or equitable interest in the Goods and anyone acting on their behalf.
- k. **Person** includes persons or bodies corporate.



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SHIPPING**

**THE CUSTOMER'S ATTENTION IS DRAWN TO THE CLAUSES HEREOF THAT EXCLUDE OR LIMIT THE COMPANY'S LIABILITY AND THOSE THAT REQUIRE THE CUSTOMER TO INDEMNIFY THE COMPANY IN CERTAIN CIRCUMSTANCES**

### **Application**

2.a. Subject to sub-clause (b.) below, services rendered by the Company in the course of its business, whether gratuitous or not, are subject to these Conditions and the Customer confirms that it has read and understood and agrees to be bound by these Conditions.

(i) Part I shall apply to all such services and activities.

(ii) Part II shall only apply to the extent that the Company provides such services and activities on behalf of a third party.

(iii) Part III shall only apply to the extent that the Company provides such services and activities as principals.

b. Where a document bearing a title of or including "bill of lading" (whether or not negotiable), or "waybill" is issued by or on behalf of the Company and provides that the Company contracts as carrier, the provisions set out in such document shall prevail in the event of any inconsistency with these Conditions. Further, where a document bearing a title of or including "bill of lading" (whether or not negotiable) or waybill is issued by or behalf of the Physical / Actual Carrier showing the Company as the 'Shipper' or 'Consignee' as the case may be (example Master BL), the Company shall, at its discretion, may rely on provisions in such document to the extent that they are more favourable to these Conditions.

**c. EVERY VARIATION, CANCELLATION OR WAIVER OF THESE CONDITIONS MUST BE IN WRITING SIGNED BY A DIRECTOR OF THE COMPANY. NOTICE IS HEREBY GIVEN THAT NO OTHER PERSON HAS OR WILL BE GIVEN ANY AUTHORITY WHATSOEVER TO AGREE TO ANY VARIATION, CANCELLATION OR WAIVER OF THESE CONDITIONS.**

3. The Company shall be considered to be acting as the principal contractor in the following circumstances:

a. where the company performs any carriage, handling or storage of Goods but only to the extent that the carriage is performed by the Company itself or its servants and the Goods are in the actual custody and control of the Company, or

b. to the extent that the Company expressly agrees in writing to act as a principal, or

c. to the extent that the Company is held by a court of law to have acted as a principal.



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4. Without prejudice to the generality of clause 3,

a. the charging by the Company of a fixed price for a service or services of whatsoever nature shall not in itself determine or be evidence that the Company is acting as a principal contractor in respect of such service or services;

b. the supplying by the Company of their own or leased equipment shall not in itself determine or be evidence that the Company is acting as a principal contractor in respect of any carriage, handling or storage of Goods;

c. the Company shall not be deemed to be acting as the principal contractor where the Company procures a bill of lading or other document evidencing a contract of carriage between a person, other than the Company, and the Customer or Owner;

d. the Company does not act as the principal contractor when providing services in respect of or relating to customs requirements, taxes, licenses, consular documents, certificates of origin, inspection, certificates and other similar services;

e. Quotations are given on the basis that immediate acceptance and are subject to the right of withdrawal or revision. If any changes occur in the rates of freight, insurance premiums or other charges applicable to the goods, quotations and charges shall be subject to revision accordingly with or without notice.

#### **Customer's Obligations**

5. The Customer warrants that he is either the Owner or the authorised agent of the Owner of the Goods and that he is authorised to accept and is accepting these Conditions not only for himself but also as agent for and on behalf of the Owner of the Goods.

6. The Customer warrants that he has reasonable knowledge of matters affecting the conduct of his business, including but not limited to the terms of sale and purchase of the Goods and all other matters relating thereto.

7. The Customer shall give sufficient, lawful and executable Instructions.

8. The Customer warrants that the description and particulars of the Goods are complete and accurate. The Customer shall be liable for consequences arising out of misdeclaration of the Goods.



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9. The Customer warrants that:

a. the Goods are properly packed, marked, labelled and stowed in a manner appropriate to any operations or transactions affecting the Goods and the characteristics of the Goods except where the Company has accepted instructions in respect of such services.

b. At the port of loading Containers picked up for stuffing will be returned to the nominated terminal/ yard within the agreed 'free time', and

c. At the discharge port/ place of delivery, it will clear/arrange to clear the Goods within the agreed 'free time' failing which the Customer/ Owner will be responsible for inter alia charges which accrue, including (but not limited to) Container detention charges. Further, the Customer confirms that it is aware that the Company may refuse permission to off-load Containers until all charges relating to such Containers are paid. Any standing costs (including Container detention charges) which accrue during this period shall be to the Customer's account.

### **Special Instructions, Goods and Services**

10.a. Unless otherwise previously agreed in writing, the Customer shall not deliver to the Company or cause the Company to deal with or handle Dangerous Goods.

b. If the Customer is in breach of sub-clause (a) above he shall be liable for all loss or damage whatsoever caused by or to or in connection with the Goods howsoever arising. The Customer shall defend, indemnify and hold harmless the Company against all penalties, claims, damages, costs and expenses whatsoever arising in connection therewith and the goods may without notice be destroyed or otherwise dealt with at the sole discretion of the Company or any other person in whose custody they may be at the relevant time.

c. If the Company agrees to accept Dangerous Goods and then, in the opinion of the Company or any other person, they constitute a risk to other goods, property, life or health they may without notice be destroyed or otherwise dealt with at the expense of the Customer or Owner.

11.a. The Customer undertakes not to tender for transportation any Goods that require temperature control without previously giving written notice of their nature and particular temperature range to be maintained.

b. In the case of a temperature controlled Container stuffed by or on behalf of the Customer by a third party, the Customer further undertakes that;

(i) the Container has been properly pre-cooled or preheated as appropriate, and

(ii) the Goods have been properly stuffed in the container, and

(iii) its thermostatic controls have been properly set by the Customer or the third party.



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If the above requirements are not complied with, the Company shall not be liable for any loss of or damage to the Goods caused by such non-compliance.

12.a. No insurance will be effected except upon express instructions given in writing by the Customer. All insurance effected by the Company is subject to the usual exceptions and conditions of the policies of the insurance Company or underwriters taking the risk.

b. When effecting insurance The Company shall be deemed to be acting on behalf of the Customer.

c. Unless otherwise agreed in writing, 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.

d. Should the insurers dispute their liability for any reason, the insured shall have recourse against the insurers only. The Company shall not have any responsibility or liability whatsoever in relation to the insurance.

13. The Company shall not be obliged to make any declaration for the purposes of any statute, convention or contract as to the nature or value of any Goods, or as to any special interest in delivery.

14. a. Unless otherwise previously agreed in writing or otherwise provided for under the provisions of a document signed by the Company, instructions relating to the delivery or release of Goods against payment or against surrender of a particular document shall be in writing.

b. The Company's liability resulting from such instructions relating to the delivery or release of the goods other than in writing shall not exceed that provided for in respect of mis-delivery of Goods.

c. Notwithstanding anything in these Conditions the Company may at its discretion, refuse to deliver Goods except against surrender of the original duly endorsed transport document.

15. The Company does not guarantee transit times and unless otherwise previously agreed to in writing that the Goods shall depart or arrive by a particular date, the Company accepts no responsibility for departure or arrival dates of Goods, whether or not any such delay is caused by the negligence of the Company and/or its servants or agents.



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## **General Indemnities**

16. a. The Customer and Owner shall defend, indemnify and hold harmless the Company against all liability, loss, damage, costs and expenses arising:

- (i) from the nature of the goods unless caused by the Company's negligence,
- (ii) out of the Company acting in accordance with the Customer's or Owner's instructions, or
- (iii) from a breach of warranty or obligation by the Customer or arising from the negligence of the Customer or Owner.

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

c. Advice and information in whatever form it may be given is provided by the Company for the Customer and/or Owner only and the Customer and/or Owner shall defend, indemnify and hold harmless the Company for all liability, loss, damage, costs and expenses arising out of any other person relying on such advice or information. The Customer shall not pass such advice or information to any third party without the Company's written agreement and the Customer and/or Owner shall indemnify the Company against any loss suffered because of a breach of this condition.

d. (i) The Customer undertakes that no claim be made against any servant, sub-contractor or agent of the Company which imposes or attempts to impose upon any of them any liability whatsoever in connection with the Goods, if any such claim should nevertheless be made, to indemnify and hold harmless the Company against all consequences thereof.

(ii) Without prejudice to the foregoing, every such servant sub-contractor or agent shall have the benefit of all provisions herein, as if such provisions were expressly for their benefit. In entering into this contract the Company, to the extent of those provisions, does so not only on his behalf but as agent and trustee for such servants, sub-contractors and agents.

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

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



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e. The Customer shall be liable for the loss, damage, contamination, soiling, detention or demurrage before, during and after the Carriage of property (including, but not limited to, Containers) of the Company or any person or vessel referred to in (d) above caused by the Customer or Owner or any person acting on behalf of either of them or for which the Customer is otherwise responsible.

### **Charges Etc.**

17.a. The Customer shall pay to the Company in cash or as agreed all sums immediately when due without reduction or deferment on account of any claim, counterclaim or set-off. The Company shall be entitled to interest @ 18% p.a. on delayed payments.

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

### **Liberties and Rights of Company**

18. The Company shall be entitled, except insofar as has been otherwise agreed in writing, to enter into contracts, on any terms whatsoever, on behalf of itself or the Customer and without notice to the Customer:

- for the carriage of Goods by any route, means or person,
- for the carriage of Goods of any description whether containerised or not on or under the deck of any vessel,
- for the storage, packing, transhipment, loading, unloading or handling of Goods by any person at any place whether on shore or afloat and for any length of time,
- for the carriage or storage of Goods in containers or with other goods of whatever nature,
- for the performance of its own obligations,

and to do such acts as in the opinion of the Company may be necessary or incidental to the performance of the Company's obligations.

19. a. The Company shall be entitled but under no obligation, to depart from the Customer's instructions in any respect if in the opinion of the Company there is good reason to do so in the Customer's interest and it shall not thereby incur any additional liability.

b. The Company may at any time comply with the orders or recommendations given by any Authority. The responsibility of the Company in respect of the Goods shall cease on the delivery or other disposition of the Goods in accordance with such orders or recommendations.



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20. If at any time the performance of the Company's obligations, in the opinion of the Company or any person whose services the Company makes use of, is or is likely to be affected by any:

- a. hindrance,
- b. risk,
- c. delay,
- d. difficulty, or
- e. disadvantage whatsoever

and which cannot be avoided by reasonable endeavours by the Company or such other person, the Company may, on giving notice in writing to the Customer or Owner or without notice where it is not reasonably possible to give such notice, treat the performance of its obligations as terminated and place the Goods or any part of them at the Customer or Owner's disposal at any place which the Company may deem safe and convenient, where upon the responsibility of the Company in respect of the Goods shall cease. The Customer shall be responsible for any additional costs of carriage to, and delivery and storage at, such place and all other expenses incurred by the Company.

21. If the Customer or Owner does not take delivery of the Goods or any part thereof at the time and place when and where the Company, or any person whose services the Company makes use of, is entitled to call upon the Customer or Owner to take delivery thereof, the Company or such other person shall be entitled to, at its option and without further notice:

- a. to store the Goods or any part of the Goods in the open or undercover at the sole risk and expense of the Customer. Such storage shall constitute delivery of the Goods and the liability of the Company shall wholly cease;
- b. to sell or dispose of the Goods at the sole risk and expense of the Customer.

22.a. The Company shall have a particular and general lien on all Goods and/or documents relating to Goods in its possession for all sums of whatsoever kind and nature due at any time from the Customer or Owner. At its option and on giving 28 days notice in writing to the Customer, the Company may sell or dispose of such Goods and/or documents at the expense of the Customer and without any liability to the Customer and Owner and apply the proceeds in or towards the payment of such sums. Upon accounting to the Customer for any balance remaining after payment of any sum due to the Company and the costs of sale or disposal the company shall be discharged of any liability whatsoever in respect of the Goods and/or documents. If on the sale of the Goods the proceeds fail to realise the

amount due, the Company shall be entitled to recover the difference from any of the parties included in the terms Customer and/ or Owner.



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b. In any event any lien shall:

- (i) survive the delivery of the Goods, and
- (ii) extend to cover the cost of recovering any sums due and for that purpose the Company shall have the right to sell the Goods and documents by public auction or private treaty, without notice to the Customer or Owner and at the Customer's and/or Owner's expense and without any liability towards the Customer or Owner.

23. The Company shall be entitled to retain and be paid all brokerages, allowances and other remunerations customarily retained by or paid to freight forwarders.

24. The Company shall have the right to enforce against the Owner and the Customer jointly and severally any liability of the Customer under these Conditions or to recover from them any sums to be paid by the Customer, which upon demand have not been paid.

### **Containers**

25. a. If a Container is packed or stuffed by or on behalf of the Customer, the Company shall not be liable for loss of or damage to the Goods if:

- (i) caused by the manner in which the Container has been packed or stuffed,
- (ii) caused by the unsuitability of the contents for carriage in the Container actually used, unless the Company has approved the suitability,
- (iii) caused by the unsuitability or defective condition of the Container actually used provided that where the Container has been supplied by or on behalf of the Company this paragraph (iii) shall only apply if the unsuitability or defective condition:
  - was not caused by negligence on the part of the Company, or
  - would have been apparent upon reasonable inspection by the Customer, or
  - Owner or person acting on behalf of either of them at or prior to the time when the Container was packed or stuffed.

(iv) the Container is not sealed at the commencement of the Carriage except where the Company has agreed to seal the Container.

b. The Customer shall defend, indemnify and hold harmless the Company against any claim, liability, loss, damage, costs and expenses arising from one or more of the matters covered in (a) above.

c. Where the Company is instructed to provide a Container, in the absence of a written request to the contrary accepted by the Company, the Company is not obliged to provide a Container of any particular type or quality.



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26.a. Except insofar as otherwise provided by these Conditions, the Company shall not be liable for any loss or damage whatsoever arising from:

- the act or omission of the Customer or Owner or any person acting on their behalf,
- compliance with the instructions given to the Company by the Customer, Owner or any other person entitled to give them,
- insufficiency of the packing or labelling of the Goods except where such service has been provided by the Company,
- handling, loading, stowage or unloading of the Goods by the Customer or Owner or any person acting on their behalf,
- inherent vice of the Goods,
- riots, civil commotions, strikes, lockouts, stoppage or restraint of labour from whatsoever cause,
- fire, flood or storm, or
- any cause which the Company could not avoid and the consequences whereof it could not prevent by the exercise of reasonable diligence,
- actual, threatened or reported war, act of war, civil war or hostilities, revolution, rebellion, civil commotion, warlike operations, act of piracy and / or violent robbery and / or capture / seizure, act of terrorism, act of hostility or malicious damage, blockage, general trade restrictions or embargos, act of government or public authority, whether lawful or unlawful, compliance with any law or governmental order, expropriation, seizure of works, requisition, nationalization, plague, epidemic, pandemic, act of God, natural disaster or extreme natural event such as earthquake, landslide, flood or extraordinary weather conditions, explosion; fire; destruction of equipment; destruction of port facilities; obstruction of waterways; cyber security incident; break-down of transport, communication, information system or power supply, ionizing radiation or contamination by radioactivity, chemical or biological contamination.

b. The Company shall not be liable for loss or damage to property other than the Goods themselves howsoever caused.

c. The Company shall not be liable for economic loss in any form, such as indirect or consequential loss or damage, loss of profit, delay, deviation, howsoever caused.



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## **Amount of Compensation**

27.1. Except insofar as otherwise provided by these Conditions, the liability of the Company, howsoever arising, and notwithstanding that the cause of loss or damage be unexplained shall not exceed the value of any Goods lost / damaged / misdirected / misdelivered / deteriorated, or any of the below limitations, in accordance with the mode of carriage or mode of service, whichever is the least:

### **a. For Carriage of Goods by Road –**

Ten times the freight paid or payable provided that the amount so calculated shall not exceed the value of the goods as declared in the Goods forwarding / booking note. (or such other amount as may prescribed from time to time under the Carriage by Road Act, 2007).

The liability of the Company shall be calculated on the actual freight collected or due or ninety per cent of total charges excluding the taxes shown on the goods receipt, whichever is higher.

Liability for loss of documents sent along with consignment order shall be not exceeding rupees five hundred (or such other amount as may prescribed from time to time under the Carriage by Road Act, 2007).

### **b. For Carriage of Goods by Sea –**

(i) **For Carriage by Sea with the Port of Loading in India** – An amount not exceeding 666.67 Special Drawing Rights per package or unit or two Special Drawing Rights per kilogram of gross weight of the goods lost or damaged, whichever is higher or the equivalent of that sum in other currency, unless the nature and value of such goods have been declared by the shipper before shipment and inserted in the Bill of Lading (or such other amount as may prescribed from time to time under the Indian Carriage of Goods by Sea Act, 1925).

Where a container, pallet or similar article of transport is used to consolidate goods, the number of packages or units enumerated in the bill of lading and as packed in such article of transport shall be deemed to be the number of packages or units for the purposes of this paragraph as far as these packages or units are concerned. Neither the Company nor the ship shall be responsible in any event for loss or damage to or in connection with goods if the nature or value thereof has been knowingly mis-stated by the Customer / Shipper in the bill of lading.

(ii) **For Carriage by Sea with the Port of Loading outside India** – As per the limitation of liability regime applicable in the State of the Port of Loading. In the absence of any prescribed regime, by default, the limitation of liability as prescribed above for carriage by sea from a port of loading in India shall be applicable.



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**c. For Carriage of Goods by Rail –**

The Customer agrees that the Company's liability shall be on back to back terms with the actual physical carrier. In the absence of any limitation of liability of the actual physical carrier, the Company's liability shall be restricted to INR 450 per kilogram up to a maximum of INR 10,000 unless the value of the Goods is declared by the Customer in the Railway Receipt and in which case the liability of the Company will not exceed the value of the Goods so declared.

**d. For Carriage of Goods by Air –**

**(i) For Carriage by Air not being International Carriage –** An amount of four hundred fifty rupees per kilogram, unless the Customer / consignor has made, at the time when the package was handed over to the Company / Carrier, a special declaration of interest in delivery at destination and has paid a supplementary sum, if so required. In that case, the Company / carrier shall be liable to pay a sum not exceeding the declared sum, unless it proves that the sum is greater than the Customer's / consignor's actual interest in delivery at destination (or such other amount as may be prescribed from time to time under the Indian Carriage by Air Act, 1972). The same limitation shall also apply to delay in delivery of cargo.

Carriage by Air, not being International Carriage' means any carriage in which according to the agreement of the parties, the place of departure and destination are both situated in India and there is no agreed stopping place outside India.

**(ii) For Carriage by Air being International Carriage –**

For Carriage governed by the Warsaw Convention, 1929 and / or Hague Protocol 1955 – An amount of 250 francs per kilogram, (or such other amount as may be prescribed from time to time under the Indian Carriage by Air Act, 1972) unless the Customer / consignor has made, at the time when the package was handed over to the Company / carrier, a special declaration of the value at delivery and has paid a supplementary sum if the case so requires. In that case the Company/ carrier will be liable to pay a sum not exceeding the declared sum, unless he proves that that sum is greater than the actual value to the Customer / consignor at delivery. The sums mentioned in this clause shall be deemed to refer to the French franc consisting of sixty-five and a half milligrams gold of millesimal fineness nine hundred. The said limitation shall also apply to delay in delivery of cargo.

**For Carriage governed by the Montreal Convention, 1999 –** A sum of Twenty Two Special Drawing Rights per kilogram (or such other amount as may be prescribed from time to time under the Indian Carriage by Air Act, 1972), unless the Customer / consignor has made, at the time when the package was handed over to the Company / carrier, a special declaration of interest in delivery at destination and has paid a supplementary sum, if so required. In that case, the Company / carrier shall be liable to pay a sum not exceeding the declared sum, unless it proves that the sum is greater than the Customer's / consignor's actual interest in delivery at destination. The said limitation shall also apply to delay in delivery of cargo.



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e. **For Carriage by Multimodal Transportation** – where the nature and value of the Goods / consignment has not been declared by the Customer / consignor before such consignment has been taken in charge by the Company / multimodal transport operator and the stage of transport at which such loss or damage occurred is not known, then the liability of the Company / multimodal transport operator to pay compensation shall not exceed two Special Drawing Rights per kilogram of the gross weight of the consignment lost or damaged or 666.67 Special Drawing Rights per package or unit lost or damaged, whichever is higher (or such other amount as may prescribed from time to time under the Multimodal Transportation of Goods Act, 1993).

Notwithstanding the foregoing, if the multimodal transportation does not, according to the multimodal transport contract, include carriage of goods by sea or by inland waterways, the liability of the Company / multimodal transport operator shall be limited to an amount not exceeding 8.33 Special Drawing Rights per kilogram of the gross weight of the Goods lost or damaged (or such other amount as may prescribed from time to time under the Multimodal Transportation of Goods Act, 1993).

Where a container, pallet or similar article is stuffed with more than one package or units, the packages or units enumerated in the multimodal transport document, as packed in such container, pallet or similar article of transport shall be deemed as packages or units.

Where the nature and value whereof have not been declared by the Customer/ consignor before such Goods / consignment has been taken in charge by the Company/ multimodal transport operator and the stage of transport at which such loss or damage occurred is known, then the limit of the liability of the Company / multimodal transport operator for such loss or damage shall be determined in accordance with the provisions above (as amended from time to time as per the relevant law applicable) in relation to the mode of transport during the course of which the loss or damage occurred.

Where delay in delivery of the consignment occurs when the consignment has not been delivered within the time expressly agreed upon or, in the absence of such agreement, within a reasonable time required by a diligent operator having regard to the circumstances of the case, to effect the delivery of the consignment, or any consequential loss or damage arises from such delay, then the liability of the Company/ multimodal transport operator shall be limited to the freight payable for the consignment so delayed (or such other amount as may prescribed from time to time under the Multimodal Transportation of Goods Act, 1993).

f. **Miscellaneous** – in respect of all other claims other than those subject to the provisions (a) to (e),

- the Company's liability for loss, damage, misdirection, misdelivery, or deterioration of Goods shall be limited to the value of the Goods so lost damaged, misdirected, mis-delivered, or deteriorated or INR 450 per kilogram, whichever is lesser.
- the Company's liability for delay, where not excluded, shall be limited to the freight/ charges in respect of Goods delayed.



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27.2 Notwithstanding the foregoing,

(i) the Company shall be entitled to all benefits, limitations and rights available under the applicable statutory regime. Nothing herein should be deemed to be a waiver of the same.

(ii) the Company's liability in no instance shall be greater than the liability of the actual physical carrier. The Company shall be entitled to all rights / benefits / limitations / exclusions / exceptions as may be available to the actual physical carrier. Further, the Company shall be entitled to a reduction in its liability to the extent of any losses / damages recovered made by the Customer directly or on its behalf, from the actual physical carrier.

(iii) the Customer is responsible for the correctness of the particulars and statements relating to the Cargo inserted by it or its behalf in the Cargo documents (including but not limited to the Air Waybill, Forwarding Note, Booking Note, Bill of Lading, etc) or furnished by it or on its behalf to the actual physical carrier for insertion in the Cargo documents. In case of any misstatement / misrepresentation / irregularity / incorrectness / incompleteness of the particulars and statements furnished by the Customer, the Company shall be discharged of any liability whatsoever towards the loss / damage / destruction / delay to the Cargo. The Customer shall indemnify and hold the Company harmless against all losses / damage suffered by it, or by any other person to whom the Company is liable, by reason of the misstatement / misrepresentation / irregularity / incorrectness / incompleteness of the particulars and statements furnished by the Customer or on its behalf.

28.a. Compensation shall be calculated by reference to the ex-works invoice value of the Goods plus Carriage charges and insurance if paid.

b. If there be no invoice value for the Goods, the compensation shall be calculated by reference to the value of such Goods at the place and time when they are delivered to the Customer or Owner or should have been so delivered. The value of the Goods shall be fixed according to the current market price, or, if there be no commodity exchange price or current market price, by reference to the normal value of goods of the same kind and quality.

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

### **Notice of Loss, Time Bar**

30. a. Subject to a lesser period stipulated in the applicable law, the Company shall be discharged of all liability unless:

(i) notice of any claim is received in writing by the Company within 14 days after the date specified in (b) below, except where the Customer can show that it was impossible to comply with this time limit and that the claim has been made as soon as it was reasonably possible so to do, and

(ii) suit is brought in the proper forum and written notice thereof received by the Company within 9 months after the date specified in (b) otherwise any claim shall be deemed to be waived and absolutely barred.



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b. The dates referred to at (a) above are:

- (i) in the case of loss or damage to Goods, the date of delivery of the Goods,
- (ii) in the case of delay or non-delivery of the Goods, the date that the Goods should have been delivered,
- (iii) in any other case, the event giving rise to the claim.

### **General Average**

31. The Customer shall defend, indemnify and hold harmless the Company in respect of any claims for General Average contribution that may be made on the Company, irrespective of whether the carriage charges are pre-paid or not. The Customer shall provide such security as may be required by the Company for General Average contributions promptly and in a form acceptable to the Company.

### **Miscellaneous**

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

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

34. If any legislation is compulsorily applicable to any business undertaken, these Conditions shall, as regards such business, be read as subject to such legislation and nothing in these Conditions shall be construed as a surrender by the Company of any of its rights or immunities or as an increase of any of its responsibilities or liabilities under such legislation and if any part of these Conditions be repugnant to such legislation to any extent such part shall as regards such business be over-ridden to that extent and no further.

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

36. Should any clause, or part of a clause, be found to be void or unenforceable, the remainder of that clause or section of the contract shall remain unaffected.

### **Jurisdiction and Law**

37. Any dispute arising out of or in connection with this contract, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration in Mumbai.

The seat of the arbitration shall be Mumbai.



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The Tribunal shall consist of a sole arbitrator(s) to be nominated by the MCIA. The sole arbitrator shall be a person with experience in freight forwarding and container shipping.

The language of the arbitration shall be English.

The law governing this arbitration agreement shall be Indian Law. The law

governing the contract shall be Indian Law.

## **Part II: Company not acting as principal contractor**

### **Special Liability and Indemnity Conditions**

38. a. To the extent that the Company does not act as the principal contractor, the Company does not make or purport to make any contract with the Customer for the carriage, storage or handling of the Goods nor for any other physical service in relation to them and acts solely on behalf of the Customer in securing such services by establishing contracts with third parties so that direct contractual relationships are established between the Customer and such third parties.

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

39.a. The Company has the authority of the Customer to enter into contracts on the Customer's behalf and to do such acts so as to bind the Customer by such contracts and acts in all respects notwithstanding any departure from the Customer's instructions.

b. Except to the extent caused by the Company's negligence, the Customer shall defend, indemnify and hold harmless the Company in respect of all liability, loss, damage, costs or expenses arising out of any contracts made in the procurement of the Customer's requirements in accordance with clause 38.

### **Choice of Rates**

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



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### **Part III: Company as principal Special Liability Conditions**

41. To the extent that the Company contracts as principal for the performance of the Customer's instructions, the Company undertakes to perform or in its own name to procure the performances of the Customer's instructions and subject to the provisions of these Conditions shall be liable for the loss of or damage to the Goods occurring from the time that the Goods are taken into its charge until the time of delivery.

42. Notwithstanding other provisions in these Conditions, if it can be proved where the loss of or damage to the Goods occurred, the Company's liability shall be determined by the provisions contained in any international convention or national law, the provisions of which

a. cannot be departed from by private contract, to the detriment of the claimant, and

b. would have applied if the claimant had made a separate and direct contract with the actual provider of the particular service in respect of that service or stage of carriage where the loss or damage occurred and received as evidence thereof any particular document which must be issued if such international convention or national law shall apply.

43. Notwithstanding other provisions in these Conditions, if it can be proved that the loss of or damage to the Goods occurred at sea or inland waterway and the provisions of clause 42 do not apply, the Company's liability shall be determined by the Hague Rules. Reference in the Hague Rules to carriage by sea shall be deemed to include reference to carriage by inland waterways and the Hague Rules shall be construed accordingly.

44. Notwithstanding the provisions of clause 43 if the loss of or damage to the Goods occurred at sea or on inland waterways, and the Owner, Charterer or operator of the vessel establishes a limitation fund, the liability of the Company shall be limited to the proportion of the said limitation fund allocated to the Goods.

#### **45. Air Carriage**

If the Company acts as a principal in respect of a carriage of Goods by air, the following notice is hereby given:

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



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**46. Both to Blame Collision Clause**

The current Both-to-Blame Collision Clause as adopted by BIMCO is incorporated in these conditions.

**47. U.S.A./Canada Clause**

- a. With respect to the transportation within U.S.A., the responsibility of the Company shall be to procure transportation by carriers (one or more) and such transportation shall be subject to such carrier's contracts and tariffs and any law compulsorily applicable. The Company guarantees the fulfilment of such carrier's obligations under their contracts and tariffs.
- b. If and to the extent that the provisions of the Harter Act of the U.S.A. 1893 would otherwise be compulsorily applicable to regulate the Company's responsibility for the Goods during any period prior to loading on or after discharge from the vessel on which the Goods are to be or have been carried, the Company's responsibility shall instead be determined by the provisions of these Conditions, but if such provisions are found to invalid such responsibility shall be determined by the provisions in the Carriage of Goods by Sea Act of the U.S.A. approved 1936."

**Part IV: Company providing services for cleaning, maintenance, repair or storage of containers and any services connected therewith**

48. The Company shall not be liable for any improper performance or non performance of its Services, or the consequence arising therefrom, except to the extent provided in this Part IV.

49. a. 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.

b. At the Company's sole discretion, company may rectify, at its own expense, any services that were improperly performed or not performed at all. If the Company exercises this option, or is not given an opportunity by the Customer or Owner to exercise this option, the Company shall not be liable for any costs incurred by the Customer or Owner in rectifying such services.

50. The Customer and Owner undertake to inspect the Container on redelivery to the Customer or Owner or person acting on their behalf. The Company shall not be liable, and the Customer and Owner shall defend, indemnify and hold harmless the Company against any loss, damage, liability, cost and expense 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.



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51. The Company shall be discharged of all liability unless:

- (i) notice of any claim is received by the Company in writing within 14 days, and
- (ii) suit is brought in the proper form and written notice thereof received by the Company within 9 months after the date of redelivery of the Container to the Customer or Owner or person acting on their behalf.

**Part V: Company providing CHA Services**

52. The Company shall not be liable for consequences arising out of:

- a. Delay in filing documents with customs; and
- b. Delay or failure to obtain customs permissions for export of the Goods.

53. In cases in which the Company sub-contracts provision of CHA services to a third party service provider, without prejudice to its rights the Company is entitled to the benefit of any standard terms and conditions the third party service providers is entitled to rely on in defence to claims and/ or to limit its liability.