



**INFINITY LOGISTICS & TRANSPORT  
SDN BHD (531298-W) as a  
CARRIER/HAULIER**

**STANDARD HAULAGE CONDITIONS**

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## CONDITIONS OF CARRIAGE

The **CARRIER** accepts goods for carriage subject to the conditions set out below which shall come into force upon acceptance by the Carrier of the Customer's Request For Delivery and shall supersede all previous verbal and written conditions.

### 1. APPLICATION

- 1.1 These Conditions of Carriage, (hereinafter referred to as "these Conditions") shall apply to all contracts of carriage between the Carrier and the Customer. All Customers who choose to use the services of the Carrier in carrying and transporting their goods shall accept and deemed to have accepted these Conditions and abide by its provisions.
- 1.2 Save as otherwise expressly provided, any Services provided by the Carrier, whether gratuitously or otherwise, shall be subject to the provisions set out herein and these provisions are deemed to be incorporated into any agreement or arrangement between the Carrier and the Customer, including any agreement or arrangement concluded by means of Electronic Data Interchange.
- 1.3 In respect of any agreement or arrangement between the Carrier and the Customers for the provision of any Services to which these Conditions apply that is effected by means of Electronic Data Interchange, the provisions set out in the "Rules Governing Data Interchange" annexed to these conditions shall unless otherwise expressly agreed, apply and shall be deemed to form part of these Conditions.

### 2. DEFINITIONS

2.1 In these Conditions the following expressions shall have the meanings hereby respectively assigned to them, that is to say: -

- |       |                    |   |
|-------|--------------------|---|
| 2.1.1 | "Carrier"          | means (whether in regard to carriage or storage or otherwise) the Carrier including its servants and agents, and its sub-contractors together with their respective servants and agents and which expression includes its successors in title and permitted assigns.                        |
| 2.1.2 | "Haulier"          | shall have the same meaning as the term "Carrier" above in (clause 2.1.1)   |
| 2.1.3 | "Charges"          | means amount of money paid or to be paid by the Customer for services rendered by the Carrier.  |
| 2.1.4 | "Community System" | means the network system established by any legal entity authorised to operate the network system, for any particular trading community on or through which any or all of the network users or trading community, transmit messages in connection with their trading activities.            |
| 2.1.5 | "Consignee"        | Means the person, firm or company who will collect the Goods from the Carrier.  |
| 2.1.6 | "Consignment Note" | means the document containing all the particulars of the Goods issued by the Carrier for the movement of the Goods delivered to the Customer by the Carrier.  |
| 2.1.7 | "Consignment"      | means any container, transportable tank, flat or pallets, and should be constructed to ISO (International Standards Organization), SIRIM (Standards and Industrial Research Institute of Malaysia) or other acceptable standards and maintained in a state that is safe for transportation. |

2.1.8	"Contract"	means the contract of carriage between the Customer and the Carrier.
2.1.9	"Customer"	means any person or company or body incorporated under the law of any country sending or receiving or desiring to send and receive Goods by the services of the Carrier or its agents and includes unless the context otherwise requires, his principals, servants, agents (including but not limited to the forwarding agent), Consignee and owner of the Goods.
2.1.10	"Container"	means freight container (including without limitation any container, flexitank, trailer, transportable tank, flat, pallet or any article used to consolidate Goods) which may carry unique identification numbers and markings, as well as any equipment (including devices, which permit its ready handling) forming part thereof or connected thereto;
2.1.11	"Equipment"	means prime movers, trailers, side-loaders and includes any other mechanical device used to transport and haul the container.
2.1.12	"Electronic Data Interchange"	means the electronic transfer from computer to computer of commercial or administrative transactions using agreed standard to structure transaction or message data;
2.1.13	"Dangerous Goods"	means Goods, which are of a dangerous, flammable, radioactive or damaging nature, and includes Goods, which are specified as dangerous goods published by the International maritime Organization (IMO) or any law for the time being enforced in Malaysia.
2.1.14	"Excepted"	means livestock, jewellery, furs, watches, precious metals and stones, Goods" treasury notes, bullion, cash, bonds, deeds, stamps, securities, manuscripts, paintings, documents and loans, safety razor blades, tin ingots, cigarette lighters, bottled perfumery, tobacco, cigars, cigarettes, bottled wines, spirits and the like.
2.1.15	"Fragile Goods"	means the Goods that are of a brittle or delicate nature and are likely to break and includes without limitation glass, china and castings.
2.1.16	"Goods"	means the cargo accepted from the Customer, which includes goods, wares, merchandise, cargo, articles of kind and includes any container not supplied by or on behalf of the Carrier.
2.1.17	"Obnoxious Goods"	<p>means any of the following kinds of Goods which are not included in the category of Dangerous Goods: -</p> <ul style="list-style-type: none"> <li>a) substances which can cause discomfort to or adversely affect, personnel handling them;</li> <li>b) substances which will taint other cargo or containers in close proximity or which may necessitate the containers being deodorized or specially cleaned;</li> <li>c) substances, which will damage other cargo by, contact or by sifting, e.g. carbons, graphite, white pigments, greases and other "dirty" cargo.</li> <li>d) deliquescent cargo and/or cargo which readily takes up moisture even from the air or cargo in a moist or wet condition, e.g. wet salted hides;</li> </ul>

e) cargo liable to infestation by insects, mites, weevils, or grubs or which might require fumigation;

f) cargo of liquid or semi solid nature and cargo liable to liquefy with a rise in temperature such as reasonably could be foreseen; and

g) any other Goods which in the opinion of the Carrier are likely to adversely affect other cargo or to cause personnel to object to handling them or to present any difficulty in handling or transport.

2.1.18 "Perishable Goods" means Goods that over a short period of time may be physically destroyed or so changed, altered or deteriorated and/or of un merchantable qualities and/or have lost their commercial identity and which no longer fulfill their contract description.

2.1.19 "Government" means the Government of Malaysia.

2.1.20 "Request For Delivery or RFD" Means document required and issued by the Carrier requesting the Customer its agent to submit particulars and details of the Goods to be delivered.

2.1.21 "Request For ROT" Means the same as RFD as stated above in (clause 2.1.20) Transport" or

2.1.22 "RM" means Ringgit Malaysia, the lawful currency of Malaysia.

2.1.23 "Royal Customs Excise Department" means the Royal Malaysian Customs and Excise Department. And

2.1.24 "Sub-Contracting" Means all persons (other than the Carrier and the Customer) referred to in Conditions under Clause 10 and all its sub-clauses. Parties"

2.1.25 "Tariffs" means a published list of the Carrier's haulage charges.

2.1.26 "Trailer" means the chassis used for the purpose of transporting a container.

2.1.27 "Force Majeure" means an event not within the control of the Carrier's and has a direct or indirect effect on the Carrier's obligations in the Performance of this Contract; events which it is unable to prevent, avoid or remove and shall include war whether declared or not, hostilities, invasion, armed conflict, act of foreign enemy, riot, insurrection, strikes, resolution, act of terrorism, sabotage or criminal damage, natural disasters including earthquakes, lightning, volcanic eruptions, hurricanes, tempest, fires and floods.

### **3. CONTRACT OF CARRIAGE**

3.1. The Contract shall take effect when the Customer submits the Request For Delivery for a particular Consignment or any other documents as agreed and accepted by the Carrier and shall end after the completion of the transit and after all the charges have been paid.

3.2. Both parties may, however, revoke or amend the terms of the Contract upon mutual agreement in writing.

#### **4. AUTHORITY OF AGENTS**

- 4.1 No agent or employee of the Carrier is permitted to alter or vary these Conditions in any way unless he or she is expressly authorized to do so by the Carrier.
- 4.2 A charging by the Carrier of a fixed price for any Services of whatsoever nature shall not in itself determine or be conclusive evidence that the Carrier is acting as an agent or a principal in respect of such Services;
- 4.3 The supplying by the Carrier of their own or leased equipment, shall not in itself determine or be conclusive evidence that the Company is acting as an agent or a principal in respect of any carriage, handling or storage of Goods;
- 4.4 The Carrier acts an agent and never as a principal when providing Services in respect of or relating to customs requirements, taxes, licenses, consular documents, certificates of origin, inspection, certificates and other services similar or incidental thereto.

#### **5. CUSTOMER'S OBLIGATIONS**

- 5. The Customer warrants that he is either the Owner or the authorised agent of the Owner of the Goods, and 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.
- 5.2 The Customer is responsible to ensure that a safe, secure and proper area is provided for the carrier to land and park the trailer. The Customer is liable for any loss or damage to the Carrier's equipment (including but not limited to the trailer and/or prime mover) and shall be responsible and liable for the safety of the Goods while under the Customer's custody.
- 5.3 The Customer shall be deemed to be competent and to have reasonable knowledge of matters affecting the conduct of his business, including terms of sale and purchase and all other matters relating thereto.
- 5.4 The Customer shall give to the Carrier sufficient and executable instructions.
- 5.5 If the Customer's instructions are insufficient and unable to be executed, the Carrier shall as soon as possible and within the limits of its duty of care and diligence inform and verify the same with the Customer.
- 5.6 The Customer warrants that the description and particulars of the Goods are complete, accurate and correct.
- 5.7 Except where the Carrier has agreed in writing to pack the Goods, the Customer warrants that the Goods are properly and sufficiently prepared, packed, stowed and marked, and that the preparation, packing, stowage, labelling and marking are appropriate to any operations or transactions affecting the Goods and the characteristics of the Goods.
- 5.8 The Customer shall solely be liable for demurrage or loss, damage, contamination, soiling or detention, before, during or after the carriage of the Goods (including but not limited to Containers) or any person referred to herein caused directly or indirectly by the Customer or any person acting as servants, agents or independent contractors for or on behalf of either of them.

#### **6. THE CARRIER'S TARIFF**

The terms of the Carrier's applicable Tariffs are incorporated herein. Copies of the relevant provisions of the applicable Tariffs are obtainable from the Carrier upon request. In case of inconsistency between the Conditions and the applicable Tariffs, these Conditions shall prevail.

## **7. THE CARRIER'S CHARGES**

- 7.1. Payment of charges as per Carrier's applicable Tariffs has to be made in advance unless satisfactory arrangements have been made with the Carrier. The Carrier may grant at its sole discretion any credit facility arrangement to the Customer, in which case the payment is to be made within the specified period agreed between the Carrier and the Customer.
- 7.2. The Carrier's charges for carriage shall be payable by the Customer without prejudice to the TLP's rights against the Consignee or any other person.
- 7.3. The Customer is given fourteen (14) days grace period to dispute any invoices billed to the Customer by the Carrier in written form failing which all invoices are deemed as final and conclusive evidence of the acceptance of the Customer of its indebtedness to the Carrier in the amount stated.
- 7.4. The Customer shall settle all charges by the Carrier within the agreed period Clause 7.1 without prejudice to the Carrier's rights against the Consignee or any other person liable for the charges. Then should the charges not be paid within the period specified for payment, the Customer agrees to pay to the TLP interest at the rate of one point five percent (1.5%) per month on the invoice value from the date of the invoice to the date of actual payment.
- 7.5. A claim or counter claim shall not be made the reason for deferring or withholding money payable or liabilities incurred to the Carrier.
- 7.6. The Customer shall pay the Carrier's charges for the detention of the Carrier's vehicles, containers or coverings or other equipment or for the use or occupation of other accommodation, whether before or after transit, unless the Customer proves that such detention or use or occupation has arisen from default of the Carrier s. Any free time provided by the Carrier's applicable Tariff shall not be subject to detention charges.
- 7.7. The Customer shall be responsible and liable to pay to the Carrier its costs in respect of any delay encountered as a result of the Carrier being prevented from effecting delivery of the Consignment/Goods for causes other than the Carrier's own negligence and shall pay to the Carrier its charges in respect of any frustrated or abortive journey occasioned other than by the Carrier's negligence.
- 7.8. The Carrier shall be entitled to impose an appropriate charge for supplying any document proving delivery requested by the Customer in respect of each Goods.

## **8. IMPOSSIBILITY OF PERFORMANCE**

- 8.1. The Carrier shall be relieved from its obligation to perform the Contract to the extent that the performance of the same is prevented by failure of the Customer, events of Force Majeure, weather conditions or cause beyond the reasonable control of the Carrier.
- 8.2. The Carrier is not liable for the Performance of the Contract if it is unable to perform its obligation or effect Termination of the Contract due to an event of Force Majeure. In the event of the same, the Customer shall endeavor to help the Carrier in whatever ways to mitigate any effect that the same might have on the Performance of the Contract of both parties.
- 8.3. In the event of Force Majeure, any total or partial loss or damage to the Consignment/Goods or Containers is the liability of the Customer and the Carrier shall not be responsible for any claims either from the Customer or any other third party for the loss or damage therein.

- 8.4. The Carrier shall not be liable to the Customer for any loss damage including but not limited to Acts of God, hijack, armed robbery, strikes, lockouts, riots, civil commotion, acts of war, general chaos, inclement weather, flood landslides / slips, earthquakes or any other circumstances of whatsoever nature beyond the control of the Carrier.

## **9. THE CARRIER IS NOT A COMMON CARRIER**

The Carrier is not a common carrier and will accept Goods for carriage only on these Conditions. The Carrier has the right to refuse any Request For Delivery from any Customer without assigning any reasons whatsoever.

## **10. PARTIES AND SUB-CONTRACTING PARTIES**

- 10.1 Where the Customer is not the owner of some or all of the Goods in any Consignment he shall be deemed for all purposes to be agent of the owner or owners. The owner shall be liable for any act committed by the agent, which is incidental to or usual to the Contract although such act may not have been consented by or known to the owner.
- 10.2 The Carrier may employ the services of any other carrier for the purpose of fulfilling the Contract. Any other carrier shall have the like power to sub-contract on like terms.
- 10.3 The Carrier enters into the Contract for and on behalf of itself and its servants, agents and sub-contractors and its sub-contractors' servants, agents and sub-contractor, all of whom shall be entitled to the benefit of the Contract and shall be under no liability to the Customer or anyone claiming through him in respect of the Goods in addition to or separately from that of the Carrier under the Contract.
- 10.4 The Customer shall save harmless and keep the Carrier indemnified against all claims or demands whatsoever by whomsoever made in excess of the liability of the Carrier under these Conditions in respect of any loss, damage or injury however caused, whether or not by the negligence of the Carrier, its servants, agents or sub-contractors.

## **11. LOADING AND UNLOADING**

- 11.1 When collection or delivery takes place at the Customer's premises, the Carrier shall not be under any obligation to provide any plant, machinery, equipment, power or labor, required for loading or unloading at such premises. Any assistance given by the Carrier or its servant at or beyond the usual place of delivery shall be at the sole risk of the Customer and the Carrier shall not be liable for any claims for damages arising from such loss.
- 11.2 Consignment/Goods requiring special equipment for loading to, or unloading from the vehicle are accepting for carriage only on the condition that the sender has duly ascertained from the Consignee that such equipment are available at destination. Where the Carrier is, without prior arrangement in writing with the Customer, called upon to load or unload such Goods the Carrier shall be under no liability whatsoever to the Customer for any damage howsoever caused whether or not by the negligence of the Carrier, its servants or agents, and the Customer shall indemnify the Carrier against any damage suffered.
- 11.3 The Carrier may, at its discretion, provide special equipment for loading and unloading of container from trailer at the applicable tariff subject to prior notice given to the Carrier by the Customer.



- 11.4 The Customer shall ensure that the parking bay allotted for the container during loading and unloading is able to sustain the weight of the Goods in the container and the weight of the container itself. In the event of any mishap/loss/occurrences at the parking bay due to the parking bay being unsuitable, the Customer shall be held liable irregardless of how the damage was caused whether or not by the negligence of the Carrier, its servants or agents.
- 11.5 If loss is suffered during unloading of Consignment/Goods, such as toppling of containers due to usage of improper unloading method, the Customer shall be held liable regardless of how the damage was caused whether or not by the negligence of the Customer, its servants or agents.
- 11.6 During trucking from one location to another location, the Carrier shall be held liable for any mishaps/losses during the trucking process provided that any losses or damages are proven to be due to the Carrier's negligence or fault.
- 11.7 In the event, the containers carrying the Goods had to be placed outside the premises of the Customer or outside the allocated area for unloading/loading due to insufficient parking space and a loss takes place, during any time of the day and in whatever form, to the container or the Goods so placed, the Customer shall be held solely liable for the said loss and the Carrier shall not be held negligent under any circumstances.

## **12. REQUEST FOR DELIVERY OF CONTAINER**

- 12.1 The Carrier may accept Request For Delivery of containers provided it is made on an approved Request For Delivery form officially endorsed by the Customer making such a request.
- 12.2 Copies of the approved Request For Delivery forms can be obtained from all the registered branches of the Carrier.

## **13. CONSIGNMENT NOTE**

- 11.1 Every transportation of Goods, except as otherwise arranged, shall be addressed and labelled in accordance with the Carrier's requirements and be accompanied by a Consignment Note containing such particulars as the Carrier may require. The Carrier shall, if so required sign a document prepared by the sender, acknowledging the receipt of the Consignment/Goods but no such document shall be evidence of the condition or of the correctness of the declared nature, quality, quantity or weight of the Consignment/Goods at the time it is received by the Carrier.
- 11.2 The Consignment Note shall be prima facie evidence of the receipt of the Consignment/Goods by the Carrier in the case of the Consignment/Goods packed in a container for export and movement between two inland sites. The prevailing document or documents in use at the collection point as agreed deemed to be agreed between the Customer and the Carrier or their agents shall be prima facie evidence of the receipt of the Consignment/Goods by the Carrier in the case of import Consignment/Goods packed in a container.
- 11.3 The Consignment Note shall be prima facie evidence of the delivery of the Goods by the Carrier in the case of Goods packed in a container for import and movement between two inland points. The prevailing document or documents in use at the delivery point as agreed or deemed to be agreed between the Customer and the Carrier or their agents shall be prima facie evidence of the delivery of the Goods by the Carrier in the case of export Goods packed in a container.
- 11.4 No representation is made by the Carrier as to the weight, contents, measures, quantity, description, condition, marks, number of packages or value of Goods and the Carrier shall be under no responsibility whatsoever in respect of such description or particulars.

- 11.5 Unless upon receipt of the Goods, the Consignee or his agent notifies the Carriers in writing (whether on the Consignment note or otherwise) of any loss or damage to the Goods and the general nature thereof, the Carriers are deemed to have delivered the Consignment prima facie in the same order and condition as when received by them.

#### **14. TRANSIT**

- 14.1 Transit shall commence when the Consignment/Goods is handed to the Carrier at the agreed point of collection.
- 14.2 Transit shall end (unless otherwise previously determined) when the Consignment/Goods is tendered at the agreed place of delivery at the Consignee's premises.

Provided always: -

- a) That if no safe and adequate access or no adequate unloading facilities exist there, then transit shall be deemed to end at the expiry of one clear day after notice in writing (or telephone if so previously agreed in writing) of the arrival of the Goods at the Carrier's premises has been sent to the Consignee;
  - b) That when for any other reason whatsoever a Goods cannot be delivered or when a Goods is held by the Carrier to wait order "to be kept till called for" or upon any like instructions and such instructions are not given, or the Goods is not called for and removed, within a reasonable time, then transit shall be deemed to end; and
  - c) The foregoing do not affect the right of the Carrier to raise detention charges for prime mover and trailer incurred (and any other staging, diversion, storage charges, futile trip charges incurred) as provided for in the Tariffs.
- 14.3 If the Carrier has made arrangement to deliver a container to the Customer at an agreed time, however, due to unforeseen circumstances the container is either delivered earlier or later than the agreed time, but within a reasonable time and if the Customer refuses acceptance or no representative of the Customer is present to accept the container, and the container is hauled back to the Carrier's premises, the Customer shall have to submit a new Request For Delivery of the container to his premises and the Customer has to bear the costs of the futile trip made earlier together with any other charges that may incur.
- 14.4 If delivery of the Goods or any part thereof is not taken by the Customer, at the time and place when and where the Carrier or any person whose services the Carrier makes use of, calls upon the Customer to take delivery thereof, the Carrier shall be entitled to store the Goods or any part thereof at the sole risk of the Customer, whereupon the liability of the Carrier in respect of such Goods shall wholly cease and the costs of such storage and all other expenses and liability whatsoever paid or payable or incurred or which may be incurred by the Carrier shall be paid by the Customer on demand.

#### **15. UNDELIVERED OR UNCLAIMED CONSIGNMENT/GOODS**

- 15.1 When the Carrier is unable for whatsoever reason, to deliver a Goods to a Consignee, or, as Consignee, or, as Consignee may order or where, by virtue of the proviso to (Clause 14.2) hereof, transit is deemed to be at an end, the Carrier may sell the Goods and any payment or tender of the proceeds after deductions of all proper charges and expenses in relation thereto and all outstanding charges in relation to the carriage and storage of the Goods shall (without prejudice to any claim or right which the Carrier may have against the Customer otherwise arising under these Conditions) discharge the Carrier from all liabilities in respect of such Goods, carriage and storage.

Provided that: -

- a) The Carrier does what is reasonable to obtain the value of the Goods; and
- b) The power of sale shall not be exercised where the name and address of the sender or of the Consignee is known unless the Carrier shall have done what is reasonable in the circumstances to give notice to the sender, or if the name and address of the sender is known to the Consignee then the Consignment/Goods will be sold unless within the time specified in such notice, the Goods are taken away or instructions are given for their disposal by the sender.
- c) Without prejudice to clauses (a) and (b), the Carrier shall be entitled but under no obligation, at the expenses of the Customer payable on demand and without any liability on the part of the Carrier to the Customer, to sell or dispose :-
  - a. on giving 21 days notice in writing to the Customer or where the Customer cannot be traced and reasonable efforts have been made to contact any parties who may reasonably be supposed by the Company to have any interest in the Goods, of Goods or any part thereof which in the sole opinion of the Carrier cannot be delivered as instructed; or
  - b. without notice to the Customer, of Goods which have perished, deteriorated or altered, or are in immediate prospect of doing so or which has caused or may reasonably be expected to cause loss or damage to any person or property or to contravene any applicable laws or regulations.

## **16. METHODS AND ROUTES OF TRANSPORTATION**

16.1 The Carrier may at any time and without notice to the Customer: -

- a) Use any means of transport and storage whatsoever;
- b) Proceed by any route at his discretion (whether or not the nearest or most direct or customary or advertised route);
- c) Load and unload the Goods at any place and store the Goods at any place;
- d) Comply with any orders and recommendations given by the Government or authority or any person or body acting or purporting to act as or on behalf of the Government or authority or having under the terms of the insurance of the conveyance employed by the Carrier the right to give orders or directions; and
- e) Where Goods are carried wholly or partly by water or air or rail and the Carrier has sub-contracted such carriage, the Carrier shall have the full benefits of all indemnities, rights, limitations and exclusions of liability available to the subcontractor under any law, statute or regulation and in his contract with the Carrier and the liability of the Carrier shall not exceed the amount recovered, if any, by the Carrier from such subcontractor. In the absence of proof to the contrary where Goods are carried partly by land and partly by water or air or rail, any loss damage or delay shall be deemed to have occurred whilst the Goods are being carried by road.

## **17. ROUTE SURVEY**

Customer shall be responsible to make available all access routes for the safe delivery of the container. The Carrier may but under no obligation carry out a route survey or appoint an independent consultant to do the route survey and all costs to be borne by the Customer.

## **18. GOODS SHUT-OUT / EXPIRY OF FREE PERIOD**

The Carrier shall not be liable for delay or late arrival of Goods for export resulting in subsequent shut-out by vessel or the incurrence of any charges for Consignment/Goods imported lying in port premises after expiry of the free period.

## **19. PERFORMANCE OF CONTRACT**

19.1. If at any time the performance of the Contract evidenced by these Conditions is or is likely to be affected by any hindrance, risk, delay, difficulty or disadvantage or whatever kind which cannot be avoided by the exercise of reasonable endeavor, the Carrier (whether or not the transport is cancelled) may without notice to the Customer treat the performance of the Contract as terminated and place the Goods or any part of them at the Customer disposal at any place which the Carrier may deem safe and convenient, whereupon the responsibility of the Carrier in respect of such Goods shall cease. The Carrier shall nevertheless be entitled to full freight and charges on Goods received for transportation and the Customer shall pay any additional cost for carriage to and delivery and storage at such place.

19.2. The circumstances referred to in sub-clause 19.1 above shall include, but shall not be limited to those caused by the existence or apprehension of war declared or undeclared, hostilities, warlike or belligerent acts or operations, riots, civil commotions or other disturbances, strikes, lockouts or other labor troubles whether partial or general whether or not involving employees of the Carrier or its sub-contractors, bad weather, any act of God or other obstacles in the transportation of the Goods.

## **20. LIABILITY FOR LOSS OR DAMAGE**

20.1 The Customer shall at all times ensure that they have purchased or obtained full insurance coverage against any event of loss and or damage for the Goods in transit/stowage including the coverage of the container, which holds the Goods. This coverage shall include the entire journey from receipt until delivery of the container up to and including any transit, temporary stoppage and/or staging, stowage, partial loading/unloading period. The Customer shall provide a copy of such policy or policies of insurance coverage to the Carrier on request and there shall be no entitlement of subrogation to the insurer of the Carrier or the Carrier in that policy.

20.2 The Carrier shall ensure that adequate insurance cover has been taken to protect itself from any possible claims from any parties thereto pertaining to any losses suffered by the Customer or any Claimant due to the sole negligence of the Carrier. The particulars of the Carrier's Insurance Advisor / Scheme Manager / Risks Manager and the services provided therein are attached herewith under Appendix A.

20.3 Unless the Carrier advises otherwise in writing to the Customer, the Carrier is deemed to be covered under Subrogation insurance. All claims whether for loss or damages however it may arise, whether from the Customer or other third parties shall be claimed against the Customer's own insurer. In the event of a valid and proven claim against the Carrier by reason of actual negligence or fault of the Carrier, the Customer's insurer shall then claim against the Carrier's insurers. The Customer shall make no direct claims against the Carrier unless provided for by the individual Carrier's insurers.

20.4 The Customer is not allowed to deduct in any manner whatsoever, either by direct debit, contra of account or any other method that may reduce the payment or withhold the payment that is due to the Carrier for services previously rendered, in any effort to off-set claims for losses, damages or penalties for delays and any other costs which may arise.

- a) the amount of compensation for any one case shall not exceed
  - i) the value of the Goods or Containers (all types) lost, damaged, misdirected, misdelivered or in respect of which a claim arises; or
  - ii) RM 3.00 per kilo gross weight of the Consignment/Goods or Containers (all types); or
  - iii) RM 100,000.00 per claim; or
  - iv) In case of damage to machines/machinery parts during transportation, the Carrier shall only be liable to the repair cost up to the limit allowed by the Carrier's insurers. In the event only a part of the machines/machinery is damaged, the weight to be used for compensation shall be the weight of the damaged parts only;

**whichever of the above is lower.**

- b) The value of the Goods :-
  - i) shall be calculated by reference to the invoice value of the Goods plus freight and insurance if paid; and
  - ii) if there is no invoice value for the Goods, shall be calculated by reference to the value of such Goods at the place and time when they are delivered to the Customer, their assignees or such person as instructed by the Customer or should have been delivered. The value of the Goods shall be fixed according to the current market value or commodity exchange price or if there is not current market price value or commodity exchange price, by reference to the normal value of Goods of the same kind and quality.
- c) In the case of loss or damage to any containers, the Carrier is only liable for the physical damage or loss of the container and shall not be liable for any demurrage, detention, store-rent or any other incidental charges relating to the container. This is applicable from the day after the incident of damage to the container or three (3) days after being handed into the Customer's custody subject to the limit for compensation under clause 20.3 and all its sub-clauses above.

20.5 The Carrier shall not in any event be liable for: -

- a) Loss or damage to Goods/Containers unless it is advised in writing within three (3) days and the claim is made in writing within seven (7) days after the termination of transit of the Goods, or the part of the Goods, in respect of which the claim arises.
- b) Non-delivery of the whole of the Goods or part thereof unless it is advised of the non-delivery in writing within three (3) days and the claim is made in writing within seven (7) days after the Customer handed the Goods to the Carrier.
- c) Losses/damages to Goods found in the container if the container's seal is intact upon receipt by the Customer

20.6 The Carrier shall in any event be discharged from all liability whatsoever in respect of the Goods unless suit is commenced within a period of time of one (1) year from the termination of transit or, in the case of loss, misdelivery or non-delivery of the whole or part of the Goods, from the said seven (7) days referred to in Clause 20.4 above hereof.

20.7 In the event, the Customer or the Carrier is not covered under any insurance policy, any claims for losses proven to be due to the negligence of the Carrier shall be treated under the conditions set forth in clauses (20.3), (20.4) and (20.5) above and all the respective subclauses.

- 20.8 Any offer on settlement accepted by the Customer for any particular loss shall be deemed final and conclusive. The Carrier shall be discharged from any further liabilities on the said loss and shall not be liable for any further direct or indirect consequential losses that might arise from the said loss howsoever caused.

## **21. LIMIT OF LIABILITY IN RESPECT OF DELAY**

- 21.1 The liability of the Carrier in any event in respect of delay in the carriage of any complete Goods shall not exceed a sum equal to the carriage charges received by the Carrier in respect of that Goods.
- 21.2 The Carrier shall not in any case be liable for indirect or consequential losses or for loss of a market.

## **22. DETENTION CHARGES**

The Customer shall be liable for demurrage/detention charges out of detention of equipment and trailers and/or containers beyond the stipulated free time stipulated under applicable Tariffs. The liability shall also extend in cases where trailers and/or containers are detained by order of the Government or its agents.

## **23. WARRANTIES AND INDEMNITIES**

- 23.1 The extent of the Carrier's responsibilities and liabilities are defined herein and the Customer shall save harmless and keep the Carrier indemnified from and against all claims costs and demands of whatsoever nature and by whomsoever made and howsoever arising, from negligence or otherwise in excess of the liability of the Carrier under these Conditions arising directly or indirectly from the collection, carriage, storage and/or delivery of the Customer's Consignment.

Accordingly, the Customer shall indemnify the Carrier against: -

- a) All consequences suffered by the Carrier (including but not limited to claims, demands, proceedings, fines, penalties, damages, costs, expenses and loss of or damage to the carrying vehicle and to other Goods carried) of any error, omission, mis-statement or misrepresentation by the Customer or other owner of the Goods or by any servant or agent of either of them, insufficient or improper packing, labeling or addressing of the Goods or fraud;
  - b) All claims and demands whatever by whoever made in excess of the liability of the Carriers under these Conditions;
  - c) All losses suffered by and claims made against the Carrier in consequence of loss of or damage to property caused by or arising out of the carriage by the Carrier of Dangerous Goods whether or not declared by the Customer as such;
  - d) All claims made upon the Carrier by the Royal Customs and Excise in respect of dutiable Consignment/Goods consigned in bond whether or not transit has ended;
  - e) All currency losses as a result of payment being made in currency other than Malaysian Ringgit or such agreed currency of payment between the parties.
- 23.2 In the absence of written notice to the contrary given to the Carrier at the time of delivery to it, all Goods and the packaging within which they are contained are warranted by the Customer to be fit to be carried and stored.

- 23.3 The Customer agrees that he will not submit to the Carriers any Goods considered to be dangerous, verminous, infested, contaminated or condemned Goods unless he shall first have given to the Carrier in writing full details of the same and obtained the written agreement of the Carrier to the submission of such Consignment.
- 24.4 If the Customer fails to comply with sub-clause 23.3 above, the Customer will be responsible for and will indemnify the Carrier against all losses, damage and claims of whatsoever nature made upon the Carrier for which the Carrier may be or become liable arising from the tender of a Consignment all or part of which consists of dangerous, verminous, contaminated or condemned Goods including loss and/or damage sustained by the Carrier to its own property and injuries or loss sustained by servants, agents and/or sub-contractors of the Carrier whether or not caused by the negligence of the Carrier, its servants, agents or subcontractors of the Carrier whether or not caused by the negligence of the Carrier, its servants, agents or sub-contractors.

## **24. INSPECTION OF GOODS**

The Carrier shall be entitled but under no obligation, to open any container any time and to inspect the contents. If it thereupon appears that the contents or any part thereof cannot safely or properly be carried further, either at all or without incurring any additional expenses to carry or take any measures in relation to the container or its contents or any part thereof, the Carrier may abandon the transportation thereof and/or take any measures and/or incur any reasonable expenses to carry or to continue the carriage or to store the same under cover or in the open, at any place, which storage shall be deemed to constitute due delivery under these Conditions. The Customer shall indemnify the Carrier against any reasonable additional expenses so incurred.

If the container is FCL (Full Container Load), load, counted and sealed, the Carrier will not be responsible for any loss or damage to the Goods and/or container.

## **25. SUBROGATION RIGHTS**

The customer shall comply with all the regulations or requirements of the Customs, port and other authorities, and shall bear and pay all duties, taxes, fines, imposts, expenses or losses incurred or suffered by reason thereof or by reason of any illegal, incorrect or insufficient marking, numbering and addressing of the Goods., and indemnify the TLP in respect thereof.

## **26. TIME TO TAKE DELIVERY OF GOODS**

The customer shall take delivery of the Goods within the time provided for by the Carrier's applicable Tariffs.

## **27. GENERAL LIEN**

The Carrier shall have a general lien against the owner of any Consignment/Goods for money whatsoever due from such owner to the Carrier. If any lien is not satisfied within a reasonable time, the Carrier may at its absolute discretion sell the Goods as agents for the owner and apply the proceeds towards the money due and the expenses of the sale, and shall upon accounting to the Customer, for the balance remaining if any, be discharged from all liability whatsoever in respect of the Goods.

## **28. INTERIM CARRIAGE**

If the Carrier undertakes carriage of Goods in a container involving a particular stage of the overall transport of the container, the Carrier's liability for loss or damage to the Goods shall be limited between the time the Goods was received by the Carrier for transportation and the time the Consignment/Goods was delivered to the Customer.

## **29. LAW COVERING THE CONTRACT**

These Conditions and all agreements between the Carrier and the Customer shall be governed by Malaysian law and the parties agree to submit to the non-exclusive jurisdiction of the Malaysian courts.

## **30. OTHER PUBLISHED REGULATIONS**

All Goods are carried or stored subject also to any other applicable published bye-laws or regulations relating to the services of the Carrier for the time being in force and in the event of conflict between such bye-laws or regulations and these Conditions, the said bye-laws or regulations shall prevail.

## **31. NON-COMPLIANCE**

The Carrier shall not in any case be liable for loss or damage directly occasioned by the failure of the Customer to comply with these Conditions.

## **32. ALTERATION TO THE CONDITIONS**

The provisions of these Conditions are not exhaustive and where any discrepancy or insufficient detail exists, the Customer may refer such discrepancy or insufficient detail to the Carrier. The Carrier reserves the right, at any time, to alter or repeal any or all of the provisions of this Conditions for the time being in force or make any new Conditions to the exclusion of or in addition to any or all of the existing provisions and any provisions so made shall be deemed to be the provisions of the same validity as if originally embodied herein and shall themselves be subject in the like manner to be altered or modified.

## **33. ARBITRATION**

The parties herein agree that any dispute which may arise out of or in connection with the terms of this Agreement or the interpretation, application, implementation, validity, breach or otherwise of any provision thereof and in particular in relation to the responsibility of parties in the payments of costs for failure to comply with any obligation stipulated in this Agreement shall exclusively be referred to and finally settled by arbitration in accordance with the Arbitration Act 1950. The parties herein further agree that in the event arbitration is required, the arbitrator shall be mutually agreed upon and that the arbitrator's decision shall be final, binding and conclusive between parties.



#### **34. ENACTMENTS OF LAW AND BY-LAWS**

Without prejudice to the generality of the provisions herein mentioned, any law or by-law enactments or regulations passed by the Government at any time, which are in conflict with any or all of the existing provisions, such law or by-law enactments or regulations so passed shall supersede such existing provisions.

# Appendix A

Insurance Advisor / Scheme Manager / Risks Manager :-
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**M/s Elite-Risk Solutions (M) Sdn Bhd**  
Suite 5.15, 5<sup>th</sup> Floor, The AmpWalk (North Block)  
218, Jalan Ampang, 50450 Kuala Lumpur  
Tel No : 03-21663328 Fax No : 03-  
21663313 / 21663393 e-mail :  
enquiries.kl@antholagroup.com  
website : www.anthola.com.my

Approved Panel of Loss Adjuster :-
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1. M/s Mestari Adjusters Sdn Bhd
2. M/s Links Survey (M) Sdn Bhd

Approved Panel of Solicitors : -
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1. M/s David Gurupatham And Koay
2. M/s Vicknaraj, R.D. Ratnam, Rajesh Kumar & Associates