



**INFINITY LOGISTICS & TRANSPORT
SDN BHD (531298-W) as a
TOTAL LOGISTICS PROVIDER (TLP)**

STANDARD TRADING CONDITIONS

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CONDITIONS OF CARRIAGE

The **TOTAL LOGISTIC PROVIDER** (hereinafter referred to as **TLP**) accepts to perform its services to haul, transport, store the Containers or Consignment/Goods and deliver thereto; subject to the conditions set out below which shall come into force upon acceptance by the Customer of the services provided by TLP and shall supersede all previous verbal and written conditions.

1. APPLICATION

- 1.1 These Common Trading Conditions for Malaysian Total Logistic Provider (hereinafter referred to as "these Conditions") shall apply to all contracts of carriage between the TLP and the Customer. All Customers who choose to use the services of the TLP 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 TLP, 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 TLP 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 TLP 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: -

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| 2.1.1 "Agents" | means to include sub-agents and their respective servants or agents. |
| 2.1.2 "Authority " | means a duly constituted legal or administrative person acting within its legal powers and exercising jurisdiction within any nation, state, municipality, port or airport, Free Trade Zone |
| 2.1.3 "Charges" | means amount of money paid or to be paid by the Customer for services rendered by the TLP. |
| 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 "Contract" | means the contract of carriage between the Customer and the TLP. |
| 2.1.6 "Consignment Note" | means the document containing all the particulars of the Consignment/Goods issued by the TLP for the movement of the Consignment/Goods delivered to the Customer by the TLP. |

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. Consignment shall have the same meaning as "Goods".
2.1.8 "Customer"	means any person or company or body incorporated under the law of any country sending or receiving or desiring to send and receive Consignment/Goods by the services of the TLP 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 Consignment/Goods.
2.1.9 "Container"	means freight container (including without limitation any container, flexitank, trailer, transportable tank, flat, pallet or any article used to consolidate Consignment/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;
2.1.10 "Contractor"	means direct or indirect sub-contractors and their respective servants or agents.
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 the 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 Goods"	means livestock, jewellery, furs, watches, precious metals and stones, 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 " <u>Force Majeure</u> "	means an event not within the control of the TLP and has a direct or indirect effect on the TLP'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.
2.1.17 " <u>Goods</u> "	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 TLP. "Good" shall have the same meaning as "Consignment".
2.1.18 " <u>Government</u> "	means the Government of Malaysia.
2.1.19 " <u>Hague Rules</u> "	means the provisions of the International Convention for the Unification of certain Rules of Law relating to Bills of Lading, signed at Brussels on August 25, 1924;
2.1.20 " <u>Hague – Visby Rules</u> "	means the provisions of the International Convention for the Unification of certain Rules relating to Bills of Lading signed at Brussels on 25 Aug 1924, as amended by the Protocol made on 23 Feb 1968;
2.1.21 " <u>Instructions</u> "	means a statement of the Customer's specific instructions, inclusive written or verbal.
2.1.22 " <u>Multimodal Transport Operator</u> "	shall have the same meaning as set out in the International Freight Forwarders Associations
2.1.23 " <u>Owner</u> "	means the owner, shipper and consignee of the Goods and any other person who is or may become interested in the Goods and anyone acting on their behalf.
2.1.24 " <u>Obnoxious Goods</u> "	means any of the following kinds of Goods which are not included in the category of Dangerous Goods: - <ol style="list-style-type: none"> a) substances which can cause discomfort to or adversely affect, personnel handling them; b) substances which will taint other cargo or containers in close proximity or which may necessitate the containers being deodorized or specially cleaned; c) substances, which will damage other cargo by, contact or by sifting, e.g. carbons, graphite, white pigments, greases and other "dirty" cargo.

- 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;
- 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 TLP 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.

2.1.25 "Perishable Goods"

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

2.1.26 "RM"

means Ringgit Malaysia.

2.1.27 "Royal Customs And Excise Department"

means the Malaysian Customs and Excise Department.

2.1.28 "Trailer"

means the chassis used for the purpose of transporting a container.

2.1.29 "Request For Transport (RFT)"
"Request For Delivery(RFD)"

means document required and issued by the TLP requesting the Customer or its agent to submit particulars and details of the Goods to be delivered.

2.1.30 "Total Logistic Provider"

means (whether in regards to any business undertaken, or advice provided, information or services, carriage or storage or otherwise) the TLP 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.

2.1.31 "Tariffs"

means a published list of the TLP haulage charges.

2.1.32 "Warsaw Convention"

means the Convention for the Unification of certain rules relating to international carriage by air opened for signature at Warsaw on 12 October 1929, as amended by the Hague Protocol of 1955 and the Montreal Protocol of 1995;

3. CONTRACT OF CARRIAGE

- 3.1. The Contract shall take effect when the Customer uses the services of the TLP and shall end after the completion such services 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 TLP is permitted to alter or vary these Conditions in any way unless he or she is expressly authorized to do so by the TLP.
- 4.2. A charging by the TLP of a fixed price for any Services of whatsoever nature shall not in itself determine or be conclusive evidence that the TLP is acting as an agent or a principal in respect of such Services;
- 4.3. The supplying by the TLP of their own or leased equipment, shall not in itself determine or be conclusive evidence that the TLP is acting as an agent or a principal in respect of any carriage, handling or storage of Goods;
- 4.4. The TLP 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

- 5.1. The Customer warrants that he is either the Owner or the authorised agent of the Owner of the Consignment/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 Consignment/Goods.
- 5.2. The Customer is responsible to ensure that a safe, secure and proper area is provided for the TLP to land and park the trailer. The Customer is liable for any loss or damage to the TLP's equipment (including but not limited to the trailer and/or prime mover) and shall be responsible and liable for the safety of the Consignment/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 TLP sufficient and executable instructions.
- 5.5. If the Customer's instructions are insufficient and unable to be executed, the TLP 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 Consignment/Goods are complete, accurate and correct.
- 5.7. Except where the TLP has agreed in writing to pack the Consignment/Goods, the Customer warrants that the Consignment/Goods are properly and sufficiently prepared, packed, stowed and marked, and that the preparation, packing, stowage, labeling and marking are appropriate to any operations or transactions affecting the Consignment/Goods and the characteristics of the Consignment/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 Consignment/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 TLP'S CHARGES

- 6.1. The terms of the TLP's applicable Tariffs/service rates are incorporated herein. Copies of the relevant provisions of the applicable Tariffs are obtainable from the TLP upon request.
- 6.2. Payment of charges as per the TLP's applicable tariffs/service rates has to be made in advance unless satisfactory arrangements have been made with the TLP. The TLP 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 TLP and the Customer.
- 6.3. The TLP's charges for carriage shall be payable by the Customer without prejudice to the TLP's rights against the Consignee or any other person.
- 6.4. The Customer is given fourteen (14) days grace period to dispute any invoices billed to the Customer by the TLP 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 TLP in the amount stated.
- 6.5. The Customer shall settle all charges by the TLP within the agreed period without prejudice to the TLP'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.
- 6.6. A claim or counter claim shall not be made the reason for deferring or withholding money payable or liabilities incurred to the TLP.
- 6.7. The Customer shall pay the TLP's charges for the detention of the TLP'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 TLPs.
- 6.8. The Customer shall be responsible and liable to pay to the TLP its costs in respect of any delay encountered as a result of the TLP being prevented from effecting delivery of the Consignment/Goods for causes other than the TLP's own negligence and shall pay to the TLP its charges in respect of any frustrated or abortive journey occasioned other than by the TLP's negligence.
- 6.9. The TLP shall be entitled to impose an appropriate charge for supplying any document proving delivery requested by the Customer in respect of each Consignment/Goods.

7. IMPOSSIBILITY OF PERFORMANCE

- 7.1. The TLP 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 TLP.

- 7.2. The TLP 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 TLP in whatever ways to mitigate any effect that the same might have on the Performance of the Contract of both parties.
- 7.3. 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 TLP shall not be responsible for any claims either from the Customer or any other third party for the loss or damage therein.
- 7.4. The TLP 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 TLP.

8. PARTIES AND SUB-CONTRACTING PARTIES

- 8.1. Where the Customer is not the owner of some or all of the Consignment/Goods being transported, he shall be deemed for all purposes to be the 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.
- 8.2. The TLP may employ the services of any other TLP for the purpose of fulfilling the Contract. Any other TLP shall have the like power to sub-contract on like terms.
- 8.3. The TLP 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 Consignment/Goods in addition to or separately from that of the TLP under the Contract.
- 8.4. The Customer shall save harmless and keep the TLP indemnified against all claims or demands whatsoever by whomsoever made in excess of the liability of the TLP under these Conditions in respect of any loss, damage or injury however caused, whether or not by the negligence of the TLP, its servants, agents or sub-contractors.

9. LOADING AND UNLOADING

- 9.1. When collection or delivery takes place at the Customer's premises, the TLP 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 TLP or its servant at or beyond the usual place of delivery shall be at the sole risk of the Customer and the TLP shall not be liable for any claims for damages arising from such loss.
- 9.2. 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 TLP is, without prior arrangement in writing with the Customer, called upon to load or unload such Consignment/Goods the TLP shall be under no liability whatsoever to the Customer for any damage howsoever caused whether or not by the negligence of the TLP, its servants or agents, and the Customer shall indemnify the TLP against any damage suffered.
- 9.3. The TLP 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 TLP by the Customer.

- 9.4. The Customer shall ensure that the parking bay allotted for the container during loading and unloading is able to sustain the weight of the Consignment/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 regardless of how the damage was caused whether or not by the negligence of the TLP, its servants or agents.
- 9.5. 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.
- 9.6. During trucking from one location to another location, the TLP 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 TLP's negligence or fault.
- 9.7. In the event, the containers carrying the Consignment/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 Consignment/Goods so placed, the Customer shall be held solely liable for the said loss and the TLP shall not be held negligent under any circumstances.
- 9.8. Unless upon receipt of the Consignment/Goods, the Customer or his agent notifies the TLP in writing (whether on the Consignment note or otherwise) of any loss or damage to the Consignment/Goods and the general nature thereof, the TLP is deemed to have delivered the Consignment/Goods *prima facie* in the same order and condition as when received by them.

10. REQUEST FOR DELIVERY OF CONTAINER

The TLP 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. Copies of the approved Request For Delivery forms can be obtained from all the registered branches of the TLP.

11. CONSIGNMENT NOTE

- 11.1. Every transportation of Consignment/Goods, except as otherwise arranged, shall be addressed and labeled in accordance with the TLP's requirements and be accompanied by a Consignment Note containing such particulars as the TLP may require. The TLP 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 TLP.
- 11.2. The Consignment Note shall be *prima facie* evidence of the receipt of the Consignment/Goods by the TLP 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 TLP or their agents shall be *prima facie* evidence of the receipt of the Consignment/Goods by the TLP 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 Consignment/Goods by the TLP in the case of Consignment/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 TLP or their agents shall be *prima facie* evidence of the delivery of the Consignment/Goods by the TLP in the case of export Consignment/Goods packed in a container.

- 11.4. No representation is made by the TLP as to the weight, contents, measures, quantity, description, condition, marks, number of packages or value of Consignment/Goods and the TLP shall be under no responsibility whatsoever in respect of such description or particulars.
- 11.5. Unless upon receipt of the Consignment/Goods, the Consignee or his agent notifies the TLPs in writing (whether on the Consignment note or otherwise) of any loss or damage to the Consignment/Goods and the general nature thereof, the TLPs are deemed to have delivered the Consignment prima facie in the same order and condition as when received by them.

12. TRANSIT

- 12.1. Transit shall commence when the Consignment/Goods is handed to the TLP at the agreed point of collection.
- 12.2. 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 Consignment/Goods at the TLP's premises has been sent to the Consignee;
 - b) That when for any other reason whatsoever a Consignment/Goods cannot be delivered or when a Consignment/Goods is held by the TLP to wait order "to be kept till called for" or upon any like instructions and such instructions are not given, or the Consignment/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 TLP 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.
- 12.3. If the TLP 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 TLP'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.
 - 12.4. If delivery of the Consignment/Goods or any part thereof is not taken by the Customer, at the time and place when and where the TLP or any person whose services the TLP makes use of, calls upon the Customer to take delivery thereof, the TLP shall be entitled to store the Consignment/Goods or any part thereof at the sole risk of the Customer, whereupon the liability of the TLP in respect of such Consignment/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 TLP shall be paid by the Customer on demand.

13. UNDELIVERED OR UNCLAIMED CONSIGNMENT/GOODS

13.1 When the TLP is unable for whatsoever reason, to deliver a Consignment/Goods to a Consignee, or, as Consignee may order or where, transit is deemed to be at an end, the TLP may sell the Consignment/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 Consignment/Goods shall (without prejudice to any claim or right which the TLP may have against the Customer otherwise arising under these Conditions) discharge the TLP from all liabilities in respect of such Consignment/Goods, carriage and storage.

Provided that: -

- a) The TLP does what is reasonable to obtain the value of the Consignment/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 TLP 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 Consignment/Goods are taken away or instructions are given for their disposal by the sender.
- c) Without prejudice to clauses (a) and (b), the TLP 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 TLP 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 Consignment/Goods, of Consignment/Goods or any part thereof which in the sole opinion of the TLP cannot be delivered as instructed; or
 - b. without notice to the Customer, of Consignment/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.

14. METHODS AND ROUTES OF TRANSPORTATION

14.1 The TLP 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 Consignment/Goods at any place and store the Consignment/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 TLP the right to give orders or directions; and

- e) Where Consignment/Goods are carried wholly or partly by water or air or rail and the TLP has sub-contracted such carriage, the TLP shall have the full benefits of all indemnities, rights, limitations and exclusions of liability available to the sub-contractor under any law, statute or regulation and in his contract with the TLP and the liability of the TLP shall not exceed the amount recovered, if any, by the TLP from such sub-contractor. In the absence of proof to the contrary where Consignment/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 Consignment/Goods are being carried by road.

15. ROUTE SURVEY

Customer shall be responsible to make available all access routes for the safe delivery of the container. The TLP 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.

16. CONSIGNMENT/GOODS SHUT-OUT / EXPIRY OF FREE PERIOD

The TLP shall not be liable for delay or late arrival of Consignment/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.

17. PERFORMANCE OF CONTRACT

- 17.1. 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 TLP (whether or not the transport is cancelled) may without notice to the Customer treat the performance of the Contract as terminated and place the Consignment/Goods or any part of them at the Customer disposal at any place which the TLP may deem safe and convenient, whereupon the responsibility of the TLP in respect of such Consignment/Goods shall cease. The TLP shall nevertheless be entitled to full freight and charges on Consignment/Goods received for transportation and the Customer shall pay any additional cost for carriage to and delivery and storage at such place.
- 17.2. The circumstances referred to in sub-clause 15.1 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 TLP or its sub-contractors, bad weather, any act of God or other obstacles in the transportation of the Consignment/Goods.

18. LIABILITY FOR LOSS OR DAMAGE

- 18.1. 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 Consignment/Goods in transit/stowage including the coverage of the container, which holds the Consignment/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.
- 18.2. The Customer shall provide a copy of such policy or policies of insurance coverage to the TLP on request and there shall be no entitlement of subrogation to the insurer of the TLP or the TLP in that policy.
- 18.3. Unless the TLP advises otherwise in writing to the Customer, the TLP 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 TLP by reason of actual negligence or fault of the TLP, the Customer's insurer shall then claim against the TLP's insurers. The Customer shall make no direct claims against the TLP unless provided for by the individual TLP's insurers.

- 18.4 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 TLP 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 Consignment/Goods or Containers (all types) lost, damaged, misdirected, misdelivered or in respect of which a claim arises; or
 - ii) RM 5.00 per kilo gross weight of the Consignment/Goods or Containers (all types); or
 - iii) RM 100,000.00 per claim; or
whichever of the above is lower.
 - b) The value of the Consignment/Goods :-
 - i) shall be calculated by reference to the invoice value of the Consignment/Goods plus freight and insurance if paid; and
 - ii) if there is no invoice value for the Consignment/Goods, shall be calculated by reference to the value of such Consignment/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 Consignment/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 Consignment/Goods of the same kind and quality.
 - c) In the case of loss or damage to any containers, the TLP 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 18.4 and all its sub-clauses above.
- 18.5 The TLP shall not in any event be liable for: -
- i) Loss or damage to Consignment/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 Consignment/Goods, or the part of the Consignment/Goods, in respect of which the claim arises.
 - ii) Non-delivery of the whole of the Consignment/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 Consignment/Goods to the TLP.
 - iii) Losses/damages to Consignment/Goods found in the container if the container's seal is intact upon receipt by the Customer
- 18.6 The TLP shall in any event be discharged from all liability whatsoever in respect of the Consignment/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 Consignment/Goods, from the said seven (7) days referred to in Clause 18.5 above hereof.

- 18.7 The TLP 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 TLP. The particulars of the TLP's Insurance Advisor / Scheme Manager / Risks Manager and the services provided therein are attached herewith under Appendix A.
- 18.8 Any offer on settlement accepted by the Customer for any particular loss shall be deemed final and conclusive. The TLP 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.

19. LIMIT OF LIABILITY IN RESPECT OF DELAY

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

20. 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.

21. WARRANTIES AND INDEMNITIES

- 21.1 The extent of the TLP's responsibilities and liabilities are defined herein and the Customer shall save harmless and keep the TLP 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 TLP under these Conditions arising directly or indirectly from the collection, carriage, storage and/or delivery of the Customer's Consignment/Goods. Accordingly, the Customer shall indemnify the TLP against: -

- a) All consequences suffered by the TLP (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 Consignment/Goods carried) of any error, omission, mis-statement or misrepresentation by the Customer or other owner of the Consignment/Goods or by any servant or agent of either of them, insufficient or improper packing, labeling or addressing of the Consignment/Goods or fraud;
- b) All claims and demands whatever by whoever made in excess of the liability of the TLPs under these Conditions;
- c) All losses suffered by and claims made against the TLP in consequence of loss of or damage to property caused by or arising out of the carriage by the TLP of Dangerous Consignment/Goods whether or not declared by the Customer as such;
- d) All claims made upon the TLP 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.

- 21.2 In the absence of written notice to the contrary given to the TLP at the time of delivery to it, all Consignment/Goods and the packaging within which they are contained are warranted by the Customer to be fit to be carried and stored.

- 21.3 The Customer agrees that he will not submit to the TLPs any Consignment/Goods considered to be dangerous, verminous, infested, contaminated or condemned Consignment/Goods unless he shall first have given to the TLP in writing full details of the same and obtained the written agreement of the TLP to the submission of such Consignment/Goods.
- 21.4 If the Customer fails to comply with sub-clause 21.3 above, the Customer will be responsible for and will indemnify the TLP against all losses, damage and claims of whatsoever nature made upon the TLP for which the TLP may be or become liable arising from the tender of a Consignment/Goods all or part of which consists of dangerous, verminous, contaminated or condemned Goods including loss and/or damage sustained by the TLP to its own property and injuries or loss sustained by servants, agents and/or sub-contractors of the TLP whether or not caused by the negligence of the TLP, its servants, agents or sub-contractors.

22. INSPECTION OF CONSIGNMENT/GOODS

- 22.1 The TLP 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 TLP 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 TLP against any reasonable additional expenses so incurred.
- 22.2 If the container is FCL (Full Container Load), load, counted and sealed, the TLP will not be responsible for any loss or damage to the Consignment/Goods and/or container.

23. 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 Consignment/Goods., and indemnify the TLP in respect thereof.

24. GENERAL LIEN

The TLP shall have a general lien against the owner of any Consignment/Goods for money whatsoever due from such owner to the TLP. If any lien is not satisfied within a reasonable time, the TLP may provide twenty eight (28) days notice to the Customer and upon expiry of such notice, at its absolute discretion sell the Consignment/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 Consignment/Goods.

25. GENERAL AVERAGE

The Customer shall indemnify the TLP in respect of any claims of a general average nature, which may be made on it and shall provide such security as may be required by the TLP in this connection.

26. INTERIM CARRIAGE

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

27. LAW COVERING THE CONTRACT

These Conditions and all agreements between the TLP and the Customer shall be governed by Thailand or Malaysia or English law and the parties agree to submit to the non-exclusive jurisdiction of the Malaysia courts.

28. OTHER PUBLISHED REGULATIONS

All Consignment/Goods are carried or stored subject also to any other applicable published bye-laws or regulations relating to the services of the TLP 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.

29. NON-COMPLIANCE

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

30. 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 TLP. The TLP 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.

31. 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.

32. 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.

33. AIR CARGO – WARSAW CONVENTION

If the Company acts as principal in respect of a carriage of Consignment/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 TLPs in respect of loss of or damage to cargo. Agreed stopping places those places (other than the place of departure and destination) shown under requested routing and /or those places shown in TLPs' timetables as scheduled stopping places for the route. The address of the first TLP is the airport of departure".

34. BOTH TO BLAME COLLISION CLAUSE

The current Both-to-Blame Collision Clause as adopted by BIMCO is incorporated in and deemed to form part of these Conditions. If the vessel comes into collision with another vessel as a result of the negligence of the other vessel and any act of negligence of default of the Master, Marines, Pilot or the servant of the TLP in the navigation or in the management of the vessel, the merchant will indemnify the TLP in the navigation or in management of the vessel, the merchant will indemnify the TLP against all loss or liability to the other or non – carrying vessel or her Owners insofar as such loss or liability represents loss of or damage to or any claim whatsoever of the owner of the said Consignment/Goods paid or payable by the carrying vessel or her Owner as part of his claim against the carrying vessel or TLP. The foregoing provisions shall also apply where the Owner operator or those in charge of any vessels or objects other than or in addition to the colliding vessels or objects are at fault in respect of a collision or contract.

35. JURISDICTION AND LAW

Malaysia courts shall have exclusive jurisdiction to deal with any claim or dispute which has arisen or may arise out of or in connection with the Services of the Company. Any claims or dispute arising out of or in connection with these Conditions shall be governed and construed in accordance with Malaysian and English law.

Appendix A

Insurance Advisor / Scheme Manager / Risks Manager :-

M/s Expertway (M) Sdn Bhd

Suite 5.15, 5th Floor, The AmpWalk (North Block)

218, Jalan Ampang, 50450 Kuala Lumpur

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