

**B R U F A**

**BRUNEI FREIGHT FORWARDERES ASSOCIATION**

**STANDARD TRADING CONDITIONS**

**01 JANUARY 2005 EDITION**

# STANDARD TRADING CONDITIONS

## PART I – DEFINITIONS AND APPLICATION

### 1. DEFINITIONS

1.1 In these conditions, the following words expressions, have the following meanings unless the context otherwise requires:

**“Ancillary Services”**

includes services of arranging for the storage, warehousing, collection, delivery, local transportation, insurance, customs clearance, packing, unpacking and other handling of goods and other services relating or ancillary to the Principal Services.

**“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.

**“Company”**

means (name of the company) a member of the Brunei Freight Forwarder Association (“BRUFA”) trading under these conditions.

**“Conditions”**

means the entire undertakings, terms, conditions and clauses embodied herein and includes the Company’s terms and conditions printed on the front of the Shippers’ Instructions and of the Company’s form of transport document (including trading under these Conditions).

**“Customer”**

means any person at whose request or on whose behalf the company undertakes any business, or provides advice, information or services, and includes the party named as “shipper” or “consignor” on the front of the Shippers’ Instructions and of the Company’s form of transport document (including the Company’s house air waybill or house bill of lading).

**“Dangerous Goods”**

include goods which are or may become of a dangerous inflammable or radioactive character or damaging to itself or other property, or goods so dangerously packed, or goods likely to harbour or encourage vermin to other property, or goods which owing to legal, administrative or other obstacles as to their carriage, discharge or otherwise may be detained or cause any other property or person to be detained; and empty receptacles which were previously used for the carriage of Dangerous Goods unless receptacles have been rendered safe.

**“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.

**“Goods”**

includes goods, wares, merchandise, cargo, articles of every kind and any Container not supplied by or on behalf of the Company or any part thereof, in respect of which the Company provides any Services.

**“Hague Rules”**

means the provisions of the International Convention for the Unification of Certain Rules relating to bills of lading signed at Brussels on 25 August 1924, as amended by the Protocol made at Brussels on the 23 February 1968.

**“Instruction”**

means a statement of the Customer’s specific requirements and includes the instructions specified on the front of the Shippers’ Instructions and of the Company’s form of transport document (including the Company’s house air waybill or house bill of lading).

**“Shippers’ Instruction”**

means any of the Company’s form or forms of shipping instructions or orders containing the Customer’s instructions to the Company.

**“the Owner”**

means the owner of the goods (including any packings, containers or equipment other than those provided by the Company or carriers) to which any business concluded under these Conditions relates and any other person who is or may become interested in them and including the consignee named on the front of the Shippers’ Instructions and of the Company’s form of transport document (including the Company’s house air waybill or house bill of lading).

**“Services”**

means the services to be provided by the Company and includes the Principal Services and the Ancillary Services.

**“Warsaw Convention”**

means the Convention for the unification of certain rules relating to international carriage by air signed at Warsaw on 12 October 1929 or that Convention as amended by the Hague Protocol of 1955 and the Montreal Protocol of 1996.

1.2 References to statutory provisions shall be construed as references to those provisions as respectively amended or re-enacted or as their application is modified by other provisions from time to time and shall include any provisions of which they are re-enactments (whether with or without modification).

1.3 Unless the context requires otherwise, words importing the singular include the plural and vice versa, words importing a gender include every gender, references to persons include any body corporate or unincorporated, and references to Clauses are to Clauses of these Conditions. The headings are inserted for convenience only and shall not affect the construction of these Conditions.

1.4 All representations, warranties, undertakings, agreements, covenants, obligations, liabilities, guarantees and indemnities expressed in these Conditions or otherwise implied to be made given or assumed by the Customers shall be deemed to be made, given or assumed by the Customer and the Owner jointly and severally.

1.5 No omission or delay on the part of the Company in exercising its rights shall operate as a waiver thereof, nor shall any single or partial exercise by the Company of any such right preclude the further or other exercises thereof or the exercise of any other right which it has. The rights and remedies of the Company provided in these Conditions shall be cumulative and not exclusive of any rights or remedies otherwise provided by law.

1.6 Each of the provisions of these Conditions is severable and distinct from the others and if at any time one or more of such provisions is or becomes invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions of these Conditions shall not in any way be affected or impaired thereby.

## **2. APPLICATION OF THE CONDITIONS/LEGISLATION COMPULSORILY APPLICABLE**

2.1 All and any business undertaken by the Company is transacted subject to these Conditions and each of these Conditions shall be incorporated in and to be a condition of any agreement between the Company and the Customer. All other terms and conditions are hereby excluded. Should any Customer wish to contract with the Company otherwise than subject to these Conditions, special arrangements can be made subject to revised charges having been agreed and having been paid in advance by the Customer to the Company and subject to such arrangements having been reduced into writing and signed by an authorized officer of the Customer and by an authorized officer of the Company. Save as aforesaid, no agent or employee of the Company has the Company's authority to waive or vary of these Conditions.

2.2 All and any advice information or services provided by the Company gratuitously is provided on the basis that the Company will not accept any liability whatsoever therefore, whether in tort or bailment or otherwise.

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

## **3. CONTRACTUAL STATUS OF CUSTOMER**

The Customer entering into any transaction or business with the Company hereby expressly warrants to the Company that the Customer is either the Owner or the authorized agent of the Owner and that it is authorized to accept and is accepting these Conditions not only for itself but also for the Owner. Where the Customer acts as the agent of the Owner, the Customer also accepts personal liability to the Company (but without prejudice to any of the rights or remedies of the Company against the Owner) and so that in respect of such transaction or business the Company is entitled to enforce its rights or remedies (including without limitation the right to recover any sum payable to the Company) against the Customer and the Owner jointly and severally.

#### **4. CONTRACTUAL STATUS OF THE COMPANY**

4.1 Save as provided in Clause 7, Services are provided by the Company as agents on behalf of its Customers, except that, subject to Clause 16.2, the Company itself may provide (instead of arranging to provide) the Ancillary Services.

4.2 The Company shall be entitled to perform any of its Services or exercise any of its powers or discretions hereunder by itself or its parent, subsidiary or associated companies. In the absence of agreement to the contrary any contract to which these Conditions apply is made by the Company on its own behalf and also as agent for and on behalf of any such parent, subsidiary or associated company and any such company shall be entitled to the benefit of these Conditions.

4.3 It shall not be construed that any Services are provided by the Company other than as an agent of the Customer by reason only of any one or more of the following:

- a. the Company issuing its own transport document including its house air waybill or air consignment note or house bill of lading or freight forwarder cargo receipt;
- b. the Company charges an inclusive price;
- c. the Customer's goods are forwarded, carried, transported, stored or otherwise handled together or in consolidation with other goods.

#### **5. COMPANY'S AUTHORITY**

5.1 The Company is hereby expressly authorized by the Customer as hereinafter provided.

5.2 The Company is authorized to act on behalf of the Customer to select, engage and enter into contract or arrangement (whether in the name of the Customer or otherwise) with any carriers, truckmen, forwarders, receiving or delivery agents, warehousemen, packers and other persons (together "3<sup>rd</sup> Parties", and individually "3<sup>rd</sup> Party"):

- a. for the carriage of the goods by any route or any carrier;
- b. for the storage, packing, unpacking, (local) transportation, transshipment, loading, unloading or other handling of the goods by any person at any place or places and for any length of time

AND to do other acts or enter into other contracts or arrangement for any other purposes pursuant or relating or incidental to the Customer's instructions.

5.3 The Company is authorized (but is not obliged) to depart or deviate from the Customer's instructions in any respect if in the opinion of the Company such departure or deviation is necessary or desirable in the Customer's interests or is otherwise expedient.

5.4 The Company is authorized by the Customer to act or to enter into any contract or arrangement without prior consultation with or further authorization from the Customer, AND the Company is not required, unless specifically requested by the Customer in writing, to inform the Customer of the terms and conditions or details of the contracts or arrangements or acts entered into or taken by the Company.

5.5 Without prejudice to the generality of the foregoing, the Company is authorized to agree with any 3<sup>rd</sup> Party the charges payable to such 3<sup>rd</sup> Party without reference to or further authorization from the Customer, it being agreed that the difference between the charges payable by the Company to the 3<sup>rd</sup> Party(ies), and the charges payable by the Customer to the Company is the Company's commission or remuneration or profit. The Customer waives any and has no right of enquiry of the charges payable to the 3<sup>rd</sup> Party(ies) and the Company is not under any duty to account to the Customer for the Company's commissions, remunerations or profits.

5.6 The Company is authorised (but is not obliged) to inspect or arrange for the goods to be inspected.

5.7 The Company is not obliged to arrange for the Customers' goods to be carried, forwarded, packed, unpacked, stored or handled separately. The Company is authorised (but is not obliged) to consolidate or arrange to be consolidated the goods of the Customer with other goods.

5.8 The Customer expressly agrees to be bound in all respects by any act or contract or arrangement done or entered into by the Company pursuant to the aforesaid authorizations.

## **6. WHERE THE COMPANY CONTRACTS (ON BEHALF OF THE CUSTOMER) IN ITS OWN NAME**

6.1 Where the Company enters into a contract on behalf of the Customer in its own name with any 3<sup>rd</sup> Party for any purposes, the Company is not itself a carrier for the purposes of the Carriage by Air Ordinance or the Carriage of Goods by Sea Ordinance or for any other purposes, nor does the Company make or purport to make any contract as a principal with the Customer for the carriage, storage, packing, unpacking, (local) transportation, transshipment, loading, unloading or other handling of the goods. The Company's sole obligation is to procure contracts for the carriage, storage, packing, unpacking, (local) transportation, transshipment, loading, unloading or other handling of goods by other persons.

6.2 In addition and without prejudice to the exceptions and limitations contained in these Conditions, the Company shall be entitled to the benefit of all exceptions and limitations in favour of any 3<sup>rd</sup> Party expressly contained or implied in the Company's contract with such 3<sup>rd</sup> Party. The Customer shall not seek to impose on such 3<sup>rd</sup> Party any liability greater than that accepted by such 3<sup>rd</sup> Party under such contract.

## **7. WHERE THE COMPANY CONTRACTS AS PRINCIPAL**

7.1 The Company in its absolute discretion may, under certain circumstances notwithstanding the terms and conditions contained herein, issue an Air Waybill or Bill of Lading naming the Company as the carrier and the principal. Where such a document is issued, the terms and conditions embodied in it shall be paramount in governing the relationship between the Customer and the Company in so far as those terms and conditions are inconsistent with or repugnant to these Conditions.

7.2 Where, in respect of a transaction, the Company is held by a court of competent jurisdiction to be a carrier, the Company shall be entitled to all the rights, immunities, exceptions and limitations conferred on the carrier by any applicable law or legislation, and these Conditions shall be

overridden to the extent that they are inconsistent with such rights, immunities, exceptions and limitations, but without prejudice to the operation of Clause 2.3.

7.3 If the Company is or is deemed to be a carrier in respect of a carriage of goods by air, the following notices are 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 that the Convention governs and in most cases limits the liability of carriers in respect of loss of or damage or delay to cargo."

"The first carrier's name may be abbreviated on the face of the air waybill, the full name and its abbreviation being set forth in such carrier's tariffs, conditions of carriage, regulations and timetables. The first carrier's address is the airport of departure shown on the face of the air waybill. The agreed stopping places (which may be altered by carrier in case of necessity) are those places, except the place of departure and the place of destination, set forth on the face of the air waybill or shown in carrier's timetables as scheduled stopping places for the route. Carriage to be performed under the air waybill by several successive carriers is regarded as a single operation."

7.4 If the Company itself performs (instead of arranging for the performance of) any of the Ancillary Services, the Company is entitled:

- a. to perform any local transportation of the goods by any route or by any means;
- b. to store, pack, unpack, load, unload or otherwise handle the goods at any place or places and for any length of time

AND to do all such other acts as may be necessary or incidental thereto in the absolute discretion of the Company. The Company may (but is not obliged to) depart or deviate from the Customer's instructions if in the opinion of the Company such departure or deviation is necessary or desirable in the Customer's interests or is otherwise expedient.

7.5 Notwithstanding any other provisions of these Conditions, the Company is never a common carrier and may in its sole discretion refuse to offer its services to any person.

## **8. CUSTOMER'S FURTHER WARRANTIES**

The Customer further warrants and acknowledges that :

(a) Proper packing etc.

All the goods, the subject of any Service provided by the Company, have been properly and sufficiently packed and/or prepared, and that the Company has no liability for any loss of or damage to goods which are improperly or insufficiently packed or prepared, no matter how such loss or damage is caused.

(b) Transport Unit

Where the goods delivered by or on behalf of the Customer are already carried in or on containers, trailers, flats, tilts, railway wagons, tanks, igloos, or any other unit load device (each hereafter individually referred to as "transport unit") then,

- i. the transport unit is in good condition, is suitable to carry the goods loaded therein or thereon, and is suitable for the intended carriage and other handling; and
- ii. the goods are suitable for carriage and other handling in or on the transport unit and has been properly and competently packed or loaded in or on the transport unit.

(c) Description of Goods

All descriptions, values and other particulars of the goods furnished to the Company for customs, consular and other purposes are true, complete and accurate, it being the duty of the Customer to provide such information to the Company and to ensure that such information is true complete and accurate.

(d) Fitness of Goods

In addition and without prejudice to any provisions of Clauses 10 and 11, the goods are fit and suitable for the carriage (international as well as local), storage, packing, unpacking and other handling in accordance with, pursuant or related or incidental to the Customer's instructions.

(e) Delivery of Goods

The consignee or other person entitled to the delivery of the goods shall take delivery of the goods upon their arrival at destination and shall pay all necessary charges, taxes and duties and shall comply with all necessary formalities and procedures.

**9. INDEMNITIES**

9.1 The Customer shall save harmless and indemnify and keep indemnified the Company from and against all claims, liabilities, losses, damages, costs and expenses (including without limitation all duties, taxes, imposts, levies, deposits, fines and outlays of whatsoever nature levied by any authority) arising out of the Company acting in accordance with the Customer's instructions, or arising from a breach of warranty or obligation by the Customer, or arising from the Customer's inaccurate or incomplete or ambiguous information or instructions, or arising from the negligence of the Customer or Owner.

9.2 Advice and information, in whatever form as may be given by the Company, are provided by the Company for the Customer only and the Customer shall save harmless and indemnify and keep indemnified the Company from and against all claims, liabilities, losses, damages, costs and expenses arising out of any other person relying on such advice or information. Except under special arrangements previously made in writing, advice or information which is not related to specific instructions accepted by the Company is provided gratuitously and without liability and Clause 2.2 is applicable.



9.3 The Customer undertakes that no claim shall be made against any officer, servant, agent or sub-contractor of the Company which imposes or attempts to impose upon them any liability in connection with any services provided or to be provided by the Company. If any such claim should nevertheless be made the Customer shall indemnify the Company against all consequences thereof. Without prejudice to the foregoing every such officer, servant agent and sub-contractor shall have the benefit of all provisions herein benefiting the Company as if such provisions were expressly for his or its benefit. For the foregoing purposes, the Company contracts for itself as well as agents for all the aforesaid persons.

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

9.5 The Customer shall defend, indemnify and hold harmless the Company in respect of any general average or any claims of a general average nature which may be made on the Company and the Customer shall provide such security as may be required by the Company in this connection.

## **10. DANGEROUS GOODS ETC.**

Except under special arrangements previously made in writing, the Customer warrants that the goods are not goods (or consist of goods) included in the Dangerous Goods (Application and Exemption) Regulations of the Laws of Negara Brunei Darussalam or any modification thereof or the IATA Dangerous Goods Regulations prevailing at the time the Company confirms acceptance of the Customer's instructions, nor are goods (or consist of goods) of comparable hazard, nor are goods (or consist of goods) otherwise likely to cause damage. Should the Customer nevertheless deliver any such goods to the Company or cause the Company to accept or handle or deal with any such goods otherwise than under special arrangements previously made in writing, then whether or not the Company is aware of the nature of such goods, the Customer shall be liable for all expenses losses or damages whatsoever caused by or to or in connection with the goods howsoever arising, and shall indemnify the Company against all penalties claims damages costs expenses and any other liabilities whatsoever arising in connection therewith, and the goods may be destroyed or otherwise dealt with at the risk and expenses of the Customer or the Owner in the sole discretion of and without any liability to the Company or of any other person in whose custody or control the goods may be at the relevant time. The Company or such other person shall have the right to decide whether or when the goods are or become (or consist of goods which are or become) unfit for carriage (overseas or local), storage, packing, unpacking, handling etc or are or become goods (or consist of goods which are or become goods) of comparable hazard to the goods included in the IATA Dangerous Goods Regulations or the Dangerous Goods (Application and Exemption) Regulations or any modification thereof, or are or become goods (or consist of goods which are or become goods) which are otherwise likely to cause damage. A copy of the prevailing IATA Dangerous Goods Regulations is available for inspection by the Customer upon request. If such goods are accepted under arrangements previously made in writing, they may nevertheless be destroyed, or otherwise dealt with at the risk and expenses of the Customer or the Owner in the sole discretion of and without any liability to the Company or any other person in whose custody or control they may be at the relevant time on account of risk to other goods,

property, life or health. The expression "goods likely to cause damage" includes but is not limited to goods likely to harbour or encourage vermin or other pests.

#### **11. BULLION ETC.**

Except under special arrangements previously made in writing the Company will not accept or deal with bullion, coins, precious stones, jewellery, valuables, antiques, pictures, livestock or plants. Should the Customer nevertheless deliver any such goods to the Company or cause the Company to handle or deal with any such goods otherwise than under special arrangements previously made in writing, the Company shall be under no liability whatsoever for or in connection with the goods or any part thereof (including without limitation any loss or damage or non-delivery or mis-delivery or delay) howsoever caused and notwithstanding that the value may be shown, declared or indicated on any documents accompanying the shipment.

#### **12. DEVIATION**

Subject to express instructions in writing given by the Customer and the acceptance of those instructions in writing by the Company, the Company reserves to itself absolute discretion as to the means, routes and procedures to be followed in the carriage, transportation, storage and other handling of goods. Further, if in the opinion of the Company it is at any stage necessary or desirable in the Customer's interests to depart from those instructions, the Company is hereby irrevocably authorised and shall be at liberty to do so, and any departure from the terms and conditions, or in the handling other than pursuant to the normal custom of handling the goods is done at the sole risk of the Customer or the Owner.

#### **13. WAREHOUSING**

Pending forwarding or delivery, goods may be warehoused or otherwise held at the risk of the Customer or the Owner at any place at the sole discretion of the Company and the cost therefore shall be for the account of the Customer.

#### **14. DECLARATION OF VALUE ETC.**

14.1 The Company shall not be obliged to make any declaration for the purpose of any statute or convention or contract as to the nature or value of any goods or as to any special interest in delivery, unless express instructions in writing were previously given to and accepted by the Company.

14.2 Without prejudice to the generality of Clause 14.1 where there is a choice of rates according to the extent or degree of the liability assumed by carriers, warehousemen or others, goods will be forwarded, dealt with, etc., at the Customer's or the Owner's risk and at such charges (including the lowest charges) as the Company may at its discretion decide, and no declaration of value (where optional) will be made, unless express instructions in writing to the contrary have previously been given by the Customer and accepted by the Company.

14.3 A mere statement or declaration of the value or nature of the goods for insurance or export or customs or other purposes is not and shall not be construed to be instructions to the Company to make any declaration for the purposes of Clause 14.1 and/or Clause 14.2 above.

## **15. DUTIES**

The Customer shall be liable for any duties, taxes, levies, deposits or outlays of any kind levied by the authorities at any port or place for or in connection with the goods and for any payments, storage, demurrage, fines, expenses, loss or damage whatsoever incurred or sustained by the Company in connection therewith.

## **16. INSURANCE**

16.1 No insurance will be arranged except upon express instructions given in writing by the Customer and accepted by the Company. All insurances arranged by the Company are subject to the usual exceptions and conditions of the policies of the insurance company or underwriters taking the risk. The Company shall not be under any obligation to arrange a separate insurance on each consignment but may declare it on any open or general policy. Should the insurers dispute their liability for any reason the insured shall have recourse against the insurers only and the Company shall not be under any responsibility or liability whatsoever in relation thereto notwithstanding that the premium upon the policy may not be at the same rate as that charged by the Company or paid to the Company by its Customer.

16.2 In so far as the Company agrees to arrange insurances, the Company acts solely as the agent of the Customer using reasonable effects to arrange such insurance. The Company does not warrant or undertake any such insurance will be accepted by the insurance company or underwriters.

## **17. NO DUTY TO PRESERVE RIGHTS**

The Company shall not be under any duty or obligation to the Customer or the Owner to give any notice or otherwise take any action to preserve or protect the right of the Customer or the Owner in relation to any claim or remedy which the Customer or Owner may have against any third parties.

## **18. DISPOSAL OF GOODS/LIEN ETC.**

18.1 Notice of arrival of the goods will be sent to the notify party or the consignee by ordinary methods. The Company is not liable for the non-receipt or delay in the receipt of such notices. Any charges including storages incurred pending collection will be for the account of the Customer.

18.2 Without prejudice to any other rights or remedies which the Company may have (including without limitation those under the other sub-Clauses of this Clause 18), if delivery of the goods or any part thereof is not taken by the consignee or other person entitled to the delivery of the same at the time and place when and where delivery should be taken, the Company shall be entitled (but is not obliged) to store or cause to be stored the goods or any part thereof at the sole risk of the Customer or the Owner, whereupon any liability which the Company may have in respect of the goods or that part thereof stored as aforesaid shall wholly cease and the cost of such storage shall upon demand be paid by the Customer to the Company.

18.3 Perishable goods which are not taken up immediately upon arrival or which are insufficiently addressed or marked or otherwise not readily identifiable, may be sold or otherwise disposed of without any notice to the Customer or the Owner and payment or tender of the net

proceeds of any sale after deduction of charges and expenses shall be equivalent to delivery. All charges and expenses arising in connection with the sale or disposal of the goods shall be paid by the Customer.

18.4 The Company is entitled (but not obliged) to sell or dispose of (or cause to be sold or disposed) all non-perishable goods which in the opinion of the Company cannot be delivered either because they are insufficiently or incorrectly addressed or because they are not collected or accepted by the consignee or any other reason, upon giving 14 days' notice in writing to the Customer. All charges and expenses arising in connection with the storage and sale or disposal of the goods shall be paid by the Customer.

18.5 All goods (and documents relating to goods) shall be subject to a particular and general lien and right of detention for monies due either in respect of such goods, or for any particular or general balance or other monies due from the Customer or the Owner to the Company. If any such monies due to the Company are not paid within 14 days after notice has been given to the Customer that such goods are being detained, the goods and/or the documents may be sold by auction or otherwise at the sole discretion of the Company at the expense of the Customer, and the proceeds (net of the expenses in connection with such sale) applied in or towards satisfaction of such indebtedness, and the Company shall not be liable for any deficiencies or reduction in value received on the sale of the goods, nor shall the Customer be relieved from the liability merely because the goods have been sold.

18.6 The rights of the Company under this Clause 18 are independent and cumulative.

## **19. QUOTATIONS AND CHARGES**

19.1 The Customer is primarily liable for the payment of all freight, fees, duties, charges and other expenses whether the same (or any of them) are to be pre-paid or to be collected.

19.2 The Customer shall pay to the Company all sums immediately when due without deduction or deferment on account of any claim, counterclaim or set-off. Payment to the Company is due as soon as an invoice is rendered. Payment shall be made in cash unless otherwise agreed by the Company.

19.3 The Company at its discretion may request an advance to cover fees, duties, charges, taxes and/or other expenses payable before the Company's invoice is rendered. Forthwith upon such request being made, the Customer shall make such advance to the Company.

19.4 Without prejudice to the foregoing provisions, when the Company is instructed to collect freight, duties, fees, charges or other expenses from any person other than the Customer, the Customer shall remain responsible for the payment of the same. The Customer shall forthwith upon demand pay the Company such freight, duties, fees, charges and other expenses or any balance thereof together with interest (if applicable) without deduction or deferment on account of any claim, counterclaim or set off (whether or not demand is made to such other person). Without prejudice to the generality of the foregoing, this provision shall apply if (inter alia) the goods are refused by the consignee or other person entitled to delivery or confiscated by the customs or other authorities or for any reason it is in the opinion of the Company not practicable or impossible to arrange for the delivery of the goods.

19.5 On all amounts overdue to the Company, the Company shall be entitled to interest calculated on a monthly basis from the date such accounts are overdue until payment thereof at 2% per month (compounded monthly) during the period that such amounts are overdue.

19.6 Quotations are given on the basis of immediate acceptance by the Customer and are subject to withdrawals or revisions by the Company. Further, unless otherwise agreed in writing by the Company, the Company, notwithstanding acceptance of the quotations by the Customer, shall be at liberty to revise quotations or charges with or without prior notice in the event of changes occurring in currency exchange risks, rates of freight, insurance premiums or any charges applicable to the goods.

19.7 Freight charges are usually quoted and charged on "chargeable weight" basis. Chargeable weight is the actual gross weight or volume weight, whichever is the higher. Volume weight is calculated by reference to the volume of the consignment (including packaging) divided by a certain factor. References to "per kilogramme" or "per ton" or "per pound" refer to the higher of the actual gross weight and the volume weight. Further details relating to the computation of freight charges will be provided to the Customer upon request. Customers are advised to obtain such details.

## **20. SUB-CONTRACTING**

The Company shall be entitled to sub-contract on any terms the whole or any part of the Services and any and all duties whatsoever undertaken by the Company.

## **21. LIABILITY AND LIMITATION**

21.1 Notwithstanding any negligence of the Company, its servants or agents or sub-contractors or other persons for whom the Company is responsible, the Company shall not be responsible or liable for any damage to or loss or non-delivery or mis-delivery of goods or for any delay or deviation in respect of the transportation or delivery or other handling of goods, unless it is proved that such damage, loss, non-delivery, mis-delivery, delay or deviation occurred whilst the goods were in the actual custody of the Company and under its actual control and that the damage, loss, non-delivery, mis-delivery, delay or deviation was due to the willful neglect or willful default of the Company or its own servants.

21.2 Notwithstanding any negligence of the Company, its servants or agents or sub-contractors or other persons for whom the Company is responsible, the Company shall not be liable for any non-compliance or mis-compliance with instructions given to it unless it is proved that such non-compliance or mis-compliance was caused by the willful neglect or willful default of the Company or its own servants.

21.3 Save as provided in Clause 21.1 or Clause 21.2, the Company shall be under no liability whatsoever and howsoever arising and whether in respect of or in connection with any goods or any instructions, business, advice, information or service or otherwise, and whether or not there is negligence on the part of Company, its servants or agents or sub-contractors or other persons for whom the Company is responsible.

21.4 Further and without prejudice to the generality of the preceding provisions of this Clause 21, the Company shall not in any event, whether under Clause 21.1 or Clause 21.2 or otherwise, be under any liability whatsoever for:

- a. any special, incidental, indirect, consequential or economic loss or damage (including without limitation loss of market, profit, revenue, business or goodwill);
- b. any loss or damage or expense arising from or in any way connected with fire or consequence of fire

in each case howsoever caused and whether or not resulting from any act or default or neglect of the Company or its servants or agents or sub-contractors or other persons for whom the Company is responsible.

21.5 Save where Clause 21.6 or Clause 21.7 is applicable, in no case whatsoever shall the liability of the Company howsoever arising and notwithstanding any lack of explanation exceed the value of the relevant goods or a sum of B\$100.00 per shipping package or unit or B\$1.00 per (weight) kilogram, whichever is the least.

21.6 If any one or more of the Hague Rules, the Hague-Visby Rules, the Hague-Visby Rules (as amended by the Protocol signed at Brussels on 21st December 1979), the Warsaw Convention and the Guadalajara Convention are compulsorily applicable, the relevant limitation amounts set out therein as applied by the applicable legislation will apply. In all other cases the limitation amounts detailed in Clause 21.5 will apply.

21.7 By special arrangement agreed in writing, the Company may accept liability in excess of the limit set out in Clause 21.5 if the Customer agrees to pay and has paid the Company's additional charges for accepting such increased liability. Details of the Company's additional charges will be provided upon request.

## **22. NOTICE OF CLAIM**

22.1 Any claim against the Company must be in writing and delivered to the Company at its registered office or its principal place of business in Brunei Darussalam within 14 days of:

- a. in the case of damage to goods, the date of delivery of the goods;
- b. in the case of loss or non-delivery or mis-delivery or delay in delivery of goods, the date that the goods should have been delivered; and
- c. in any other case, the date of the event giving rise to the claim.

22.2 No action shall lie against the Company if the claim is not made within the times and in the manner specified in Clause 22.1.

## **23. TIME BAR**

Any right of action against the Company shall be extinguished if suit is not brought in the proper forum and written notice thereof received by the Company within 9 months from the date the goods arrived at the destination or the date the goods should have arrived at the destination (whichever date is the earlier).

## **24. COLLECT ON DELIVERY (C.O.D.) SHIPMENTS**

Goods received with Customer's or other person's instruction to Collect on Delivery (C.O.D.) by bank drafts or otherwise, or to collect on any specified terms by time drafts or otherwise, are accepted by the Company only upon the express understanding that it will exercise reasonable care in the selection of a bank, correspondent, carrier or agent to whom it will send such item for collection, and the Company will not be responsible for any act, omission, default, suspension, insolvency or want of care, negligence, or fault of such bank, correspondent, carrier or agent, nor for any delay in remittance lost in exchange, or during transmission, or while in the course of collection.

## **25. GOVERNING LAW**

These Conditions and any act or contract to which they apply shall be governed by and construed according to the laws of the Negara Brunei Darussalam. Any dispute arising out of these Conditions or any such act or contract shall be subject to the non exclusive jurisdiction of the courts of the Negara Brunei Darussalam..

## **RULES GOVERNING ELECTRONIC DATA INTERCHANGE**

### **1. OBJECTIVES AND DEFINITIONS**

1.1 These Rules are intended to facilitate the provision of Services by the Company to its Customers through the use of Electronic Data Interchange by electronically sending the and receiving the data in agreed formats in substitution for conventional paper-based documents. These Rules seek to assure that such transitions are not legally invalid or unenforceable by reason only of their being effected by means of available electronic technologies for the benefits of the parties.

1.2 Terms defined in the Standard Trading Conditions to which these Rules form an Annex but specifically defined herein shall, unless the contract otherwise requires, have the same meanings when used in these Rules.

1.3 In these Rules, the following expressions, except where the context otherwise requires or where it is otherwise stated, shall have the following meanings:

“Adopted Protocol”

means the method for the interchange of Messages based on the [EDIFACT] standard for the presentation and structuring or the communication of Messages, or such standard as may be specifically agreed upon in writing by the parties, and more particularly defined in the User Manual;

“Data Log”

means a communication relating to the provisions of the Services, which is structured in accordance with the Adopted Protocol and includes, where the context permits, any part of such communication;

“User Manual”

means the edition currently in force of the manual on, interalia, the operation, security and technical procedures and rules applicable to the transmission of Message using the Adopted Protocol; and

“Writing”

includes a duly authenticated Message

1.4 In these Rules, references to “electronic” include a reference to mechanical, electromechanical, optical, electric-chemical or other medium, for the storage or conveyance of transmitted Messages.

## **2. APPLICATION**

2.1 These Rules shall apply to all Messages between the Company and its Customer using the Adopted Protocol in relation to the provision by the Company of any Services to which the Standard Trading Conditions apply.

2.2 Except as expressly provided, these Rules do not apply to govern any other relationships (contractual or otherwise) in the context of which Messages are communicated and, in particular, do not apply to the underlying commercial transactions relating to the provision of the Services, which shall be governed by the Standard Trading Conditions.

## **3. SYSTEMS OPERATIONS AND CONFIDENTIALITY**

3.1 The Company and the Customer agree that each of them shall:

- a. at its own expenses, test and maintain its equipment, software and services necessary to effectively and reliability transmit and receive Messages.
- b. ensure that no changes are made to the systems operations which impair the mutual capabilities of the parties to communicate as contemplated by these Rules without providing reasonable prior notice of the intended change;
- c. implement and maintain security procedures, including any specified in the User Manual, to provisions of the User Manual; and
- d. that its Messages are correct and complete in form and secure in accordance with the provisions of the User Manual; and
- e. ensure that intermediaries employed to retransmit Messages are instructed not to make any unauthorized change in the data content and that the date content of such Message is not disclosed to any unauthorized person.

3.2 No information contained in any Message communicated under these Rules shall be considered confidential unless by operation of law or by designed in the User Manual or in the Message;

3.3 In the circumstances stipulated in the User Manual or if so agreed between the parties, the parties shall apply special protection (such as encryption or other means listed in the User



Manual or agreed between the parties) to Messages behind transmitted. Unless the parties otherwise agree, the recipient of Messages as protected shall ensure that at least the same level of protection used by the sender is applied for any further transmission.

#### **4. VERIFICATION OF MESSAGES**

4.1 All Messages must identify the sender and recipient in accordance with the provisions of the User Manual and must include a means of verifying the formal completeness and authenticity of the Message by some means agreed upon in writing by the parties or by the means provided for in the Adopted Protocol.

#### **5. INTEGRITY OF MESSAGES**

5.1 Any Message transmitted in compliance with these Rules, shall be deemed to have been received when accessible to the intended recipient in the manner designed in the User Manual. Subject to Rules 5.2, each party accepts the integrity of all Messages and agrees to accord these the same status as would be applicable to information sent via paper documents.

5.2 Where there is evidence that a Message has been or is likely to have been corrupted, garbled, incomplete, incorrect or not in a good order, it shall not be acted by the recipient.

5.3 If the sender has been able to identify the circumstances mentioned in Rule 5.2, he shall retransmit the Message as soon as practicable with a clear indication that it is a corrected Message. In the absence of such re-transmission, the recipient's version of the Message shall prevail.

5.4 If is the recipient who is able to identify the circumstances mentioned in Rules 5.2, he shall inform the sender (if identifiable from the received Message), as soon as practicable and shall not act on the Message until he has received the correct Message or confirmation that the received Message is correct. In the absence of such notice to the sender by the recipient, the sender's version of the Message shall prevail.

5.5 Notwithstanding that the sender is responsible and liable for the completeness and accuracy of a Message, the sender will not be liable for the consequences of an incomplete or incorrect Message. If the error is or should be reasonably obvious to the recipient.

5.6 If the recipient has reason to believe that the Message is not intended for him, he should take reasonable action to inform the sender immediately and should delete the information contained in the Message from his system but not the Data-Log.

#### **6. ACKNOWLEDGEMENT OF RECEIPT OF MESSAGES**

6.1 Unless otherwise designated in the User Manual or the sender of a Message has expressly requested the recipient to acknowledge receipt of the Message, the receipt of the Message need not be acknowledged by the recipient.

6.2 Where and acknowledgement of recipient of a Message is designated by the user Manual or the sender of the Message has expressly requested the recipient to acknowledge receipt of a message, the following provisions shall apply:

- a. any acknowledgement of receipt of such a Message shall be given in such form, by such method and within such time limit as may be specified in the User Manual or as may be expressly agreed between the parties;
- b. where the User Manual does not specify the form, method and/or time limits for one acknowledgement of receipt of a Message, or the sender has not agreed with the recipient that the acknowledgement is to be given in a specific manner.