CHANNEL OVERSEAS (AUSTRALIA) PTY LTD

STANDARD TRADING TERMS & CONDITIONS

PART I: General Conditions

1. Application

1.1 Subject to Clause 1.2, all Services of the Company whether gratuitous or not are undertaken subject to these Conditions and not otherwise and:

(a) The provisions of Part I shall apply to all Services.

(b) The provisions of Part II shall only apply to the extent that the Services are provided by the Company as agents.

(c) The provisions of Part III shall only apply to the extent that such services are provided by the Company as principals.

1.2 Where a document is issued by or on behalf of the Company and bears the title of, or includes the words, "bill of lading" (whether or not negotiable), or sea or air "waybill" and provides that the Company contracts as carrier, the provisions set out in that document, if inconsistent with these Conditions, shall be paramount and prevail over these Conditions to the extent that such provisions are inconsistent but no further.

1.3 Any variation, cancellation or waiver of these Conditions (or any of them) must be in writing signed by a Director of the Company. No other person has or will be given any authority whatsoever to agree to any variation, cancellation or waiver of these Conditions.

1.4 Any instructions received by the Company from the Customer for the supply of Services shall constitute acknowledgement by the Customer that it has received, understands and agrees to be bound by these Conditions and will be bound by these Conditions. Such instructions received by the Company from the Customer for the supply of Services and/or any supply of goods shall also constitute authorisation for the Company to act on behalf of the Customer in accordance with these Conditions.

2. Provision of Services

2.1 All Services are provided by the Company as agents only, except in the following circumstances where the Company acts as principal:

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

(b) where, prior to the commencement of the carriage of Goods, the Customer in writing demands from the Company particulars of the identity, services or charges of persons instructed by the Company to perform part or all of the carriage, and the Company fails to give the particulars demanded within 28 days. However, for the purposes of this sub-clause, the Company shall only be deemed to be contracting as a principal in respect of that part of the carriage which the Company fails to give the particulars demanded.; or

(c) to the extent that the Company expressly agrees in writing to act as a principal, or

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

2.2 Without prejudice to the generality of clause 2.1;

(a) the charging by the Company of a fixed price for any Services whatsoever shall not in itself determine or be evidence that the Company is acting as an agent or a principal in respect of those Services.

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

(c) the Company acts as an agent where the Company procures a bill of lading, sea or air waybill or other document evidencing a contract of carriage between a person, other than the Company, and the Customer or Owner;

(d) the Company acts as an agent and never as a principal when providing Services as a customs broker in respect of or relating to customs requirements, taxes, licenses, consular documents, certificates of origin, inspection, certificates and other similar services or when providing any other services whatsoever for or on behalf of the Customer.

2.3 The Company is not a common carrier and will accept no liability as such and it reserves the right to accept or refuse the carriage of any Goods or any other Service at its discretion. All Services are performed subject only to these Conditions (and when applicable but subject to clause 21.6, the conditions on any bill of lading or seaway bill or air waybill issued by the Company as principal).

3. Definitions

In these Conditions:

(a) "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;

(b) "Company" is **Channel Overseas (Australia) Pty Ltd 69 165 365 631**;

(c) "Container" includes any container, flexitank, trailer, transportable tank, flat, pallet or any article of transport used to carry or consolidate goods and any equipment of or connected thereto;

(d) "Customer" means any person at whose request or on whose behalf the Company provides a service;

(e) "Dangerous Goods" includes goods which are or may become of a dangerous, inflammable, radio-active or damaging nature and goods likely to harbour or encourage vermin or other pests;

(f) "Force Majeure Event" means any cause or causes beyond the control of the party whose performance is directly affected by it, including but not limited to war (declared or undeclared), rebellion, revolution, tumults, political disturbance, accident to wharf, accidents at works or wharf, at receivers' works or wharf, breakdown or stoppage of slurry pipeline, transfer vessels, motor vehicles or any part of the works from which the Goods are supplied or to which the Goods are destined, including loading and/or discharging facilities, installations and/or equipment at or en route, partial or total stoppage of roads, rivers or channels, riot, insurrection, civil commotion, epidemics, quarantine, strike, lockout, blockade, industrial disturbance, labour/industrial disputes or stoppages of miners, workmen, lightermen, tugboatmen or other hands essential to the working, carriage, delivery, shipment or discharge of the said Goods whether partial or general, interference of trade unions, act of God, fire, floods, storm, tempest, volcanic eruption, earthquake, landslips, frost or snow, bad weather, intervention of sanitary, customs, and/or other constituted authorities, act of government (whether de-facto or de-jure) and supervening illegality, or any other cause beyond the control of the Company. Act of government shall include, but is not limited to, the refusal to grant any necessary import or export licence;

(g) "Goods" includes the cargo and any container not supplied by or on behalf of the Company, in respect of which the Company provides a service;(h) "Hague-Visby-Rules" means the provisions of the International Convention for the Unification of certain rules Relating to Bills of Lading signed at Brussels on 25th August 1924 as amended by the Visby Protocol of 23rd February 1968 and the SDR Protocol of 21st December 1979;

(i) "Incidental Matters" means anything done or to be done in relation to the Goods or the provision of any services ancillary to the Goods including but not limited to moving, storing or leaving the Goods at any warehouse, terminal, yard, wharf or other place or area, loading or unloading the Goods from any vehicle, vessel or other conveyance, stowing or packing the Goods or fumigating, transhipping, inspecting or otherwise handling the Goods or anything done in relation thereto;

(j) "Insolvency Event" means if any (or more than one) of the following occur with respect to a Customer:

(i) the Customer becomes insolvent or is otherwise unable to pay its debts as and when they fall due;

(ii) the Customer (or any third party) institutes any insolvency, receivership or bankruptcy proceedings with respect to the Customer, for the settlement of the Customer's debts;

(iii) the Customer makes a general assignment for the benefit of creditors; or (iv) the Customer ceases to conduct business.

(k) "Instructions" means a statement of the Customer's specific requirements;

(l) "Montreal Convention" means the Convention for the Unification of Certain Rules relating to International Carriage by Air, signed in Montreal in 1999 (Montreal Convention) as applied respectively by the legislation of the Commonwealth of Australia;

(m) "Owner" includes 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;

(m) "Person" includes individuals, partnerships, firms trusts, associates or any body or bodies corporate;

(o) "PPSA" means the Personal Property Securities Act 2009 (Cth);

(p) "Services" means the whole of the Services provided by the Company to the Customer and all matters necessarily related to the provision of the Services or ancillary to the provision of the Services;

4. Obligations of Customer

4.1 The Customer warrants that it is either the Owner or the authorised agent of the Owner of the Goods and that it is authorised to accept and accepts these Conditions, not only for itself, but also as agent for and on behalf of the Owner.

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

4.3 The Customer shall give sufficient and executable instructions.

4.4 The Customer warrants that the description and particulars of the Goods are complete and correct.

4.5 The Customer warrants that the Goods are properly packed and labelled, except where the Company has accepted instructions in respect of packaging and/or labelling.

5. Special Instructions, Goods and Services

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

5.2 If the Customer is in breach of Clause 5.1:

(a) the Customer shall be liable for all loss or damage whatsoever caused by or to or in connection with the Goods howsoever arising;

(b) the Customer shall defend, indemnify and hold harmless the Company against all penalties, claims, damages, costs and expenses whatsoever arising in connection therewith; and

(c) the Company (or any other person in whose custody the Goods may be in at the relevant time) may, at the Company's sole discretion, have the Goods destroyed or otherwise dealt with (without compensation to the Customer or liability on the Company). For the purposes of this sub-clause, notice is not required to be given to any person of the intention to destroy or otherwise deal with the Goods.

5.3 If the Company agrees to accept Dangerous Goods and then it (or any other person) reasonably forms the view that those Goods constitute a risk to other goods, property, life or health, it may (without notice or compensation to the Customer and without liability on the Customer) have the Goods destroyed or otherwise dealt with at the expense of the Customer or Owner.

5.4 The Customer undertakes not to tender for transportation any Goods which require temperature control without previously giving written notice of their nature and the particular temperature range to be maintained and, in the case of a temperature controlled Container packed or stuffed by or on behalf of the Customer, the Customer further undertakes that:-

(a) the Container has been properly pre-cooled or pre-heated as appropriate;

(b) the Goods have been properly packed or stuffed in the Container; and

(c) the Container's thermostatic controls have been properly set by the Customer.

5.5 If the requirements of Clause 5.4 are not complied with the Company shall not be liable for any loss of or damage to the Goods caused by such non-compliance.

5.6 Unless agreed in writing, the Company shall not be obliged to make any declaration for the purposes of any statute, convention or contract as to the nature or value of any Goods or as to any special interest in delivery or to make any declaration as to specific stowage requirements of any Goods.

5.7 Unless agreed in writing or otherwise provided for under the provisions of a document signed by the Company, instructions relating to the delivery or release of Goods against payment or against surrender of a particular document shall be in writing and the Company's liability shall not exceed that provided for in respect of misdelivery of Goods.

5.8 Unless agreed in writing that the Goods shall depart by or arrive by a particular date, the Company accepts no responsibility for departure or arrival dates of Goods.

6. Insurance

6.1 Insurance of the Goods is the responsibility of the Customer. The Company does not issue insurance. Upon request, the Company will provide the Customer with the contact details of insurance companies / brokers and assist the Customer so that the Customer can obtain insurance from them directly. All such insurances are subject to the usual exceptions and conditions of the policies of the insurance company or underwriters taking the risk.

7. General Indemnities and Liabilities of the Customer and Owner

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

(a) from the nature of the Goods, other than to the extent caused by the Company's negligence,

(b) out of the Company acting in accordance with the Customer's or Owner's instructions, or

(c) from a breach of warranty or obligation by the Customer or arising from the negligence of the Customer or Owner.

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

7.3 Advice and information, in whatever form it may be given, is provided by the Company for the Customer only and the Customer shall defend, indemnify and hold harmless the Company for all liability, loss, damage, costs and expenses arising out of any other person relying on such advice or information.

7.4 The Customer shall be liable for the loss, damage, contamination, soiling, delay detention or demurrage whether arising before, during and after the Carriage of property of:

(a) the Company (including, but not limited to, Containers);

(b) the Company's servants, sub-contractors or agents;

(c) independent contractors engaged by the Company for performance of part or all of the Services;

(d) any person; or (e) any vessel

caused by the Customer or Owner or any person acting on behalf of either of them or for which the Customer is otherwise responsible and will defend, indemnify and hold harmless the Company in respect of the same.

7.5 Instructions to collect payment on delivery in cash or otherwise are accepted by the Company upon and on the condition that the Company in the matter of such collection will be liable for the exercise of reasonable diligence and care only. Unless express written instructions are received that the Goods are not to be delivered without payment, the Company accepts no liability if, upon delivery of the goods, payment is not made.

8. Subcontractors

8.1 The Customer undertakes that no claim will be made against any servant, sub-contractor or agent of the Company which imposes or attempts to impose upon any of them any liability whatsoever in connection with the Goods. If any such claim should nevertheless be made, the Customer undertakes to indemnify the Company against all consequences thereof.

8.2 Without prejudice to Clause 8.1, every servant, sub-contractor or agent of the Company shall have the benefit of all provisions herein as if such provisions were expressly for their benefit. In entering into this contract, the Company, to the extent of those provisions, does so not only on its behalf, but as agent and trustee for such servants, subcontractors and agents.

8.3 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 these Conditions.

8.4 Without prejudice to the generality of this Clause 8, the indemnity referred to in Clause 8.3, shall cover all claims, costs and demands arising from or in connection with the negligence of the Company, its servants, sub-contractors and agents.

8.5 In this Clause, "sub-contractors" includes direct and indirect sub-contractors and their respective employees, servants and agents.

9. Charges etc.

9.1 The Customer shall pay to the Company in cash, or as agreed, all sums immediately when due without deduction or deferment on account of any claim, counterclaim or set-off.

9.2 When the Company is instructed to collect freight, duties, charges or other expenses from any person other than the Customer, the Customer:

(a) shall remain responsible for these amounts; and

(b) shall pay these amounts to the Company on demand where these amounts have become due and have not been paid by such other person.

9.3 On all accounts overdue to the Company, the Company shall be entitled without notice to charge default interest to be calculated at the rate 4 per cent above the base interest rate of the Company's bank applicable during the periods that such amounts are overdue for the period from the due date until the date of payment in full.

9.4 The Customer shall be liable for and pay to the Company any additional costs or expenses the Company may incur and for any loss or damage occasioned either directly or indirectly to the Company as a result of the Company relying upon the description and particulars provided by the Customer or by reason of any illegal, incorrect or insufficient marking, numbering or addressing of the Goods.

9.5 The charging by the Company of a fixed price for any Services whatsoever shall not in itself determine or be evidence that the Company is acting as an agent or a principal in respect of those services. The Company shall under no circumstances be precluded from raising a debit in respect of any fee or disbursements lawfully due to it, notwithstanding that a previous debit or debits (whether excluding or partly including the items now sought to be charged) had been raised and whether or not any notice was given that further debits were to follow. Where any amount charged by the Company is described as a disbursement (or similar expression), such amount will include the forwarder's handling and administration fee in respect of the same and the fee is not required to be separately disclosed.

9.6 The Customer acknowledges that the Company has a pecuniary interest in all contracts entered into by the forwarder as its agent in terms of these Conditions and agrees that the Company may receive

and retain all brokerages, commissions, allowances and other remunerations paid by the other party to the contract and customarily retained by or paid to forwarding agents, in addition to the charges and expenses invoiced to the Customer, and need not disclose to the Customer the nature or amount thereof. The Company may charge by weight, measurement or value and may at any time reweigh, remeasure or revalue the Goods (or request same) and charge additional fees accordingly.

9.7 Unless otherwise stated, all charges quoted are exclusive of Goods and Services Tax (GST).

10. Liberties and Rights of the Company

10.1 Unless otherwise agreed in writing, the Company shall be entitled to enter into contracts on behalf of itself or the Customer and without notice to the Customer:

(a) for the carriage of Goods by any route, means or person,

(b) for the carriage of Goods of any description, whether containerised or not, on or under the deck of any vessel,

(c) for the storage, packing, transhipment, loading, unloading or handling of Goods by any person at any place whether on shore or afloat and for any length of time,

(d) for the carriage or storage of Goods in containers or with other goods of whatever nature,

(e) for the performance of its own obligations, and to do such acts as the Company reasonably considers may be necessary or incidental to the performance of the Company's obligations.

10.2 The Company shall be entitled (without incurring any additional liability), but shall be under no obligation, to depart from the Customer's instructions in any respect if the Company considers there is good reason to do so in the Customer's interest.

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

10.4 The Company shall be entitled (but under no obligation) at any time and from time to time to inspect the Goods and for this purpose to open or remove any Containers.

10.5 If at any time the Company reasonably considers that the carriage of the Goods should not be undertaken or continued or only continued after effecting any necessary Incidental Matters or incurring additional expense or risk, the Company shall be entitled to:

(a) abandon the carriage of such cargo or to effect such additional Incidental Matters and incur such additional expense, as may be reasonably necessary in order to enable the carriage to be effected or further effected; and

(b) be reimbursed by the Customer for the cost of all such additional Incidental Matters and all such additional expense incurred.

10.6 If the Company (or any person whose services the Company makes use of) considers:

(a) the performance of the Company's obligations are likely to be effected by any hindrance, risk, delay, difficulty or disadvantage whatsoever; and

(b) the hindrance, risk, delay, difficulty or disadvantage cannot be avoided by reasonable endeavours of the Company or such other person, the Company may (upon giving notice in writing to the Customer or Owner) treat the performance of its obligations as terminated and may, at the Customer's expense, place the Goods or any part of them at the Customer's or Owner's disposal at any place which the Company deems safe and convenient.

10.7 The notice in writing referred to in Clause 10.6 is not required where it is not reasonably possible to give such notice.

10.8 Where the Company exercises its rights and obligations under Clause 10.6, responsibility and liability of the Company in respect of the Goods shall thereupon cease absolutely.

10.9 Where the Company (or any person whose services the Company makes use of) is entitled to call upon the Customer or Owner to take delivery of the Goods at a designated time and place and delivery of the Goods, or any part thereof, is not taken by the Customer or Owner at the designated time and place the Company (or such other person) shall be entitled to store the Goods in the open or under cover at the sole risk and expense of the Customer.

10.10 Notwithstanding Clauses 10.6 to 10.9, the Company shall be entitled (but under no obligation) without any responsibility or liability to the Customer and Owner, to sell or dispose of

(a) all Goods which the Company considers cannot be delivered as instructed, but only upon giving 21 days notice in writing to the Customer, and

(b) without notice, Goods which have perished, deteriorated or altered, or are in immediate prospect of doing so in a manner which has caused (or may be reasonably expected to cause) loss or damage to any person or property or to contravene applicable regulations.

10.11 Where the Company sells or disposes of Goods pursuant to Clause 10.10 the Customer shall be responsible for any costs and expenses of the sale or disposal.

10.12 The Company shall be entitled to retain and be paid all brokerages, commissions, allowances and other remunerations customarily retained by or paid to freight forwarders without notice to the Customer.

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

11. Security Interest

11.1 **Special and General Lien:** From the time the Company, or its servants or agents, receive the Goods into its custody, the Company, its servants or agents shall have a special and general lien on the Goods and a right to sell the Goods whether by public or private sale or auction without notice, for any unpaid amounts for freight, demurrage, container detention charges, duty, fines, penalties, salvage, average of any kind whatsoever and without limitation and for any and all debts, charges, expenses or any other sums due and owing by the Customer or the Customer's principals, servants or agents. In addition, the lien shall cover the all costs and expenses of exercising the lien, including the costs of a public or private sale or auction, including legal costs and administration costs. The lien and rights granted by this**)** Clause 11.1 shall survive delivery of the Goods and the Company shall be entitled to retain the proceeds of sale of the Goods in respect of any outstanding amounts whatsoever referred to in this clause. The Customer accepts that any sums due and owing by the Customer are secured debts and that any payment made to the Company in discharge of the Company's lien does not amount to a preference, priority or advantage in any manner or turn. The Company sells or otherwise disposes of such Goods pursuant to this Clause 11.1as principal and not as agent and is not the trustee of the power of sale.

11.2 **Continuing Security Interest:** From the time the Company, or its servants or agents, receive the Goods into its custody, the Goods, and all of the Customer's present and future rights in relation to the Goods, are subject to a continuing security interest in favour of Company for the payment of all amounts for freight, demurrage, container detention charges, duty, fines, penalties, salvage, average of any kind whatsoever and without limitation and for any and all debts, charges, expenses or any other sums due and owing by the Customer or the Customer's principals, servants or agents. In addition, the continuing security interest shall cover all the costs and expenses of exercising the lien, including the costs of a public or private sale or auction, including legal costs and administration costs.

11.3 **Custody and Possession:** For the purposes of these Conditions, and in particular Clauses 11.1 and 11.2 the Company shall be deemed to have custody and possession of the Goods whether the Goods are in the actual physical custody and possession of the Company or of any subcontractors, servants or agents, and whether or not the Company is in possession of any documents of title relating to the Goods. The Customer and the Company agree that the Company has possession of the Goods within the meaning of section 24 of the PPSA, even if the Goods are in the possession of the Company's subcontractors, servants or agents.

11.4 **Registration of Security Interest:** The Customer acknowledges that Company may, at the Customer's cost, register its security interest in the Goods, and all of the Customer's present and future rights in relation to the Goods, on the Personal Property Securities Register established under PPSA.

11.5 **Provide Information:** The Customer will immediately inform the Company if an Insolvency Event occurs with respect to the Customer. The Customer shall not change its name or other details without first notifying Company in writing at least 14 days before such change takes effect.

11.6 **Contracting Out and Waiver:**

(a) The Company need not give any notice to the Customer or any other person (including a notice of verification statement) unless the notice is required to be given by the PPSA and cannot be excluded.

(b) The Customer and the Company agree pursuant to section 115 of the PPSA that Sections 125, 142 and 143 of the PPSA do not apply to this Agreement.

(c) The Customer, pursuant to section 115 of the PPSA, waives its right to receive any notice, details or other document from the Company under Sections 95, 121(4), 130, 135, 132(3)(d) and 132(4) of the PPSA.

11.7 **Customer's Obligations:** The Customer will not:

(a) permit to subsist any other security interest in relation to the Goods which would rank ahead of the Company 's interest; or

(b) except in the normal course of business, sell, lease or dispose of, or permit the sale, lease or disposal of, the Goods.

11.8 **Company's Rights:** In addition to any rights the Company has under the PPSA, the Company shall have the right, as the Customer's agent, at any time while any amounts owing by the Customer to the Company under any Contract remains outstanding, to enter into the premises where Goods are stored and remove them without being responsible for any damage caused in doing so. The Customer shall indemnify the Company for all such moneys and all costs, charges and expenses in repossessing the Goods.

11.9 **Confidentiality:** The Customer and the Company agree not to disclose information of the kind mentioned in Section 275(1) of the PPSA, except in circumstances required by Sections 275(7) (b) to (e) of the PPSA. The Customer agrees that it will only authorise the disclosure of information under Section 275(7)(c), or request information under Section 275(7)(d), unless the Company approves. Nothing in this Clause 11**.9** will prevent any disclosure by the Company that it believes is necessary to comply with its other obligations under the PPSA or any other law.

12. Containers

12.1 If a Container has not been packed or stuffed by the Company, the Company shall not be liable for loss of or damage to the contents if caused by:

(a) the manner in which the Container has been packed or stuffed;

(b) the unsuitability of the contents for carriage in Containers, unless the Company has approved the suitability;

(c) the unsuitability or defective condition of the Container, provided that where the Container has been supplied by or on behalf of the Company this paragraph (c) shall only apply if the unsuitability or defective condition of the Container :

(i) arose without any negligence on the part of the Company; or

(ii) would have been apparent upon reasonable inspection by the Customer or Owner or person acting on behalf of either of them.

(d) the fact that the Container is not sealed at the commencement of the carriage, except where the Company has agreed to seal the Container.

12.2 The Customer shall defend, indemnify and hold harmless the Company against all liability, loss, damage, costs and expenses arising from one or more of the matters referred to in Clause 12.1.

12.3 Where the Company is instructed to provide a Container, in the absence of a written request to the contrary, the Company is not under an obligation to provide a Container of any particular type or quality.

12.4 The Customer agrees to indemnify and keep indemnified the Company for all hire and other charges charged for the Customer's use of Containers provided by the Company, and for any costs incurred by the Company for the cleaning of Containers.

13. General Liability

13.1 Except where otherwise provided in these Conditions, the Company shall not be liable for any loss or damage whatsoever arising from:

(a) the act or omission of the Customer or Owner or any person acting on their behalf,

(b) compliance with the instructions given to the Company by the Customer, Owner or any other person entitled to give them,

(c) insufficiency of the packing or labelling of the Goods, except where such service has been provided as a Service by the Company,

(d) handling, loading, stowage or unloading of the Goods by the Customer or Owner or any person acting on their behalf,

(e) inherent vice of the Goods,

(f) riots, civil commotions, strikes, lockouts, stoppage or restraint of labour from whatsoever cause,

(g) fire, flood, storm, explosion or theft,

(h) any Force Majeure Event, or

(i) any other cause which the Company could not avoid and the consequences whereof it could not prevent by the exercise of reasonable diligence.

13.2 Subject to Clause 5.8, the Company shall not be liable for loss or damage howsoever caused (whether or not direct, indirect or consequential) to property other than the Goods themselves and shall not be liable for any pure economic loss or loss of profit (or similar claim) , delay or deviation howsoever arising.

14. Limits of Liability

14.1 Except in so far as otherwise provided by these Conditions, the liability of the Company, howsoever arising, shall not exceed the following:

(a) in respect of all claims other than those subject to the provisions of Clause 14.4 whichever is the lesser of:

(i) the value of, or

(ii) the equivalent of US$2.00 per gross kilogram in the currency of the loss or damage, (the exchange rate to apply being the rate as at the date of the delivery of the Goods) of,

the Goods lost, damaged, misdirected, misdelivered or in respect of which a claim arises.

(b) in respect of claims for delay where not excluded by the provisions of these Conditions, the amount of the Company's charges in respect of the Goods delayed.

14.2 The limitation of liability referred to in Clause 14.1 shall apply notwithstanding that the cause of the loss or damage is unexplained.

14.3 If agreed in writing prior to receipt of the Goods, the Company may accept liability in excess of the limits set out in these Conditions upon the Customer agreeing to pay the Company's additional charges for accepting such increased liability. Details of the Company's additional charges will be provided upon request.

14.4 The value of the goods shall be calculated by reference to the invoice value of the Goods plus freight and insurance if paid.

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

14.6 Unless agreed in writing prior to receipt, the Company will not accept or deal with bullion, coin, precious stone, jewellery, antiques, works of art or other valuable Goods. Should any Customer nevertheless deliver any such Goods to the Company or cause the Company to handle or deal with any such Goods other than in accordance with prior written agreement, the Company shall be under no liability whatsoever for or in connection with such Goods howsoever arising.

14.7 The liability of the Company arising out of any one incident for breach of a any right or guarantee the Customer may have under the Competition and Consumer Act 2010 and the Australian Consumer Law, or comparable legislation in each of the States and Territories of Australia, or howsoever arising is limited to any of the following as determined by the Company:

(a) the supplying of the services again; or

(b) the payment of the cost of having the services supplied again; or

(c) the value of the Goods the subject of the services at the time the Goods were received by the Company, whichever is lower.

15. Notice of Loss, Time bar

15.1 The Company shall be discharged of all liability unless:

(a) notice of any claim is received by the Company or its agent in writing within 14 days after the date specified in Clause 15.2, or within a reasonable time after that date if the Customer proves that it was impossible to so notify, and

(b) suit is brought in the proper forum and written notice thereof received by the Company within 9 months after the date specified in Clause 15.2.

15.2 For the purposes of Clause 15.1, the applicable dates are:

(a) in the case of loss or damage to Goods, the date of delivery of the Goods,

(b) in the case of delay or non-delivery of the Goods, the date that the Goods should have been delivered,

(c) in any other case, the event giving rise to the claim.

16. General Average

16.1 The Customer shall defend, indemnify and hold harmless the Company in respect of any claims of a General Average nature, including any claims or demands for General Average security which may be made on the Company, and the Customer shall forthwith provide such security as may be required by the Company in this connection.

17. Miscellaneous

17.1 **Notice**

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

17.2 **Defences and Limits of Liability**

The defences and limits of liability provided in these Conditions shall apply in any action against the Company whether founded in contract or in tort or howsoever otherwise founded.

17.3 **Legislation**

(a) If these Conditions are held to be subject to the laws of the Commonwealth of Australia or of any particular Stateor Territory in Australia then these Conditions shall continue to apply and shall be void only to the extent that they are inconsistent with or repugnant to those laws and no further. Nothing in these Conditions is intended to have the affect of contracting out of any applicable provisions of the Competition and Consumer

Act 2010 and the Australian Consumer Law, or comparable legislation in each of the States and Territories of Australia, except to the extent permitted by those Acts where applicable.

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

17.4 **Headings**

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

18. Governing Law and Jurisdiction

18.1 These Conditions and any claim or dispute arising out of or in connection with the services of the Company shall be subject to the law of the State or Territory of Australia in which the Company has its principal place of business and any such claim or dispute shall be determined by the Courts of that State or Territory and no other Court.

PART II: Company as Agent

19. Special Liability and Indemnity Conditions

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

19.2 The Company shall not be liable for the acts and omissions of third parties referred to in Clause 19.1.

19.3 The Company, when acting as an agent, has the authority of the Customer to enter into contracts on the Customer's behalf and to do acts which bind the Customer in all respects notwithstanding any departure from the Customer's instructions.

19.4 Except to the extent caused by the Company's negligence, the Customer shall defend, indemnify and hold harmless the Company in respect of all liability, loss, damage, costs or expenses arising out of any contracts made in the procurement of the Customer's requirements in accordance with Clause 19.1.

20. Choice of Rates

20.1 Where there is a choice of rates according to the extent or degree of liability assumed by persons carrying, storing, or handling the Goods, no declaration of value (where available) will be made by the Company unless previously agreed in writing between the Customer and the Company.

PART III: Company as Principal

21 Special Liability Conditions

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

21.2 Where:

(a) the Company contracts as a principal and sub-contracts the performance of the Company's Services; and

(b) it can be proved that the loss of or damage to or in respect of the Goods arose or was caused whilst the Goods were in the care or custody of the sub-contractor; the Company shall have the full benefit of all rights, limitations and exclusions of liability available to the subcontractor in the contract between the Company and the sub-contractor and in any law, statute or regulation and the liability of the Company shall not exceed the amount recovered, if any, by the Company from the sub-contractor.

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

(a) cannot be departed from by private contract, to the detriment of the claimant; and

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

21.4 Notwithstanding other provisions in these Conditions, if it can be proved that the loss of or damage to the Goods occurred at sea or on inland waterways and the provisions of Clause 21.2 do not apply, the

Company's liability shall be determined by the Hague-Visby Rules. Reference in the Hague-Visby Rules to carriage by sea shall be deemed to include reference to carriage by inland waterways and the Hague-Visby Rules shall be construed accordingly.

21.5 Notwithstanding the provisions of Clauses 21.2, 21.3 and 21.4 but subject to clause 21.5 if the loss of or damage to the Goods occurred at sea or on inland waterways, and the Owner, Charterer or operator of the carrying vessel is entitled to limit its liability at law and establishes a limited fund, the liability of the Company shall be limited to the proportion of such limitation fund as is allocated to the Goods.

21.6 In the event of any inconsistency between these Conditions and the conditions of any bill of lading or air waybill issued by or on behalf of the Company as principal, the conditions of any such bill oflLading or seaway bill or air waybill shall prevail to the extent of such inconsistency but no further.

22 Both-to-Blame Collision Clause

22.1. The Both-to-Blame Collision Clause as recommended by BIMCO as at the time of the provision of Services is incorporated into and forms part of these Conditions.

23. USA and/or Canada and Additional Responsibility Clause

23.1 With respect to transportation within the USA or Canada, the responsibility of the Company shall be to procure transportation by carriers (one or more) and such transportation shall be subject to such carrier's contracts and tariffs and any law compulsorily applicable. The Company guarantees the fulfilment of such carrier's obligations under their contracts and tariffs.

23.2 If and to the extent that the provisions of the Harter Act of the USA 1893 would otherwise be compulsorily applicable to regulate the Company's responsibility for the Goods during any period prior to loading on or after discharge from the vessel on which the Goods are to be or have been carried, the Company's responsibility shall instead be determined by these Conditions. If such provisions are found to be invalid such responsibility shall be determined by the provisions in the Carriage of Goods by Sea Act of the USA Approved 1936.

23.3 If and to the extent that the provisions of the Regulations made pursuant to the Carriage of Goods by Sea Act 1991 (as amended) of the Commonwealth of Australia (or any amendments to such Regulations) would otherwise be compulsorily applicable to regulate the Company's responsibility for the Goods during any period prior to loading on or after discharge from the vessel on which the Goods are to be or have been carried, the Company's responsibility shall be determined by these Conditions. If such provisions are found to be invalid such responsibility shall be determined by the provisions of the said Carriage of Goods by Sea Act.

23.4 If the Hamburg Rules should be held to be compulsorily applicable to any carriage of goods by sea undertaken by the Company as principal, these Conditions shall be read subject to the provisions of the Hamburg Rules and any term of these Conditions that is repugnant to the Hamburg Rules shall be void to the extent of such repugnancy but no further.

24. Air Carriage

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

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

24.2 Notwithstanding any other provision of these Conditions, where the Company acts as a principal in respect of a carriage of Goods by air, the Company’s liability in respect of loss of or damage to such Goods shall be determined in accordance with the Montreal Convention.

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