

TRADING CONDITIONS

APPLICATION

1. (A) All services of the Company, whether gratuitous or not, are subject to:
 - (i) the provisions of Part I of these Conditions and, to the extent applicable, Parts II and III of these Conditions, and
 - (ii) the provisions of the Company's or another applicable Tariff, if any.
- (B) The following provisions shall be paramount in so far as such provisions are inconsistent with Part I of these Conditions:
 - (i) the provisions of Part II of these Conditions, to the extent that the Company undertakes or arranges the carriage of Goods or Containers and any services connected therewith;
 - (ii) the provisions of Part III of these Conditions, to the extent that the Company provides the services of cleaning, maintenance, repair or storage of Containers and any services connected therewith.
- (C) (i) In so far as these Conditions are inconsistent with the provisions of any applicable Tariff, these Conditions shall be paramount.
(ii) Copies of the provisions of any applicable Tariff are obtainable from the Company upon written request.

PART I : GENERAL CONDITIONS

DEFINITIONS

2. In these conditions:
 - (A) "Authority" is any 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 Transward Ltd. &/or Transward Container Ltd. &/or Transward Shipping Ltd. &/or Transward Stevedore Ltd. &/or Transward Container (China) Ltd. &/or Transward Logistics Ltd. &/or Hantec Transportation Ltd. &/or Go Extend Ltd. &/or Famous Launch Chartering Ltd. &/or New Moonraker Motorboat Co. Ltd. &/or The Republic Motor Boat Co. Ltd. &/or subsidiary &/or associated companies now exist or are hereinafter incorporated for their respective rights and interest;
 - (C) "Container" is any container, flexitank, trailer, transportable tank, flat, pallet or any article of transport used to carry or consolidate goods and any equipment or connected thereto and in respect of which the Company performs or is requested to perform any service or which enters the Company's depot in connection with such service;
 - (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) "Goods" is the cargo and its packaging in respect of which the Company provides or is requested to provide a service;
 - (G) "Goods of High Value" includes bullion, precious stones, bank notes or coins, bonds, negotiable instruments or securities of any kind, cigarettes, spirituous liquor and wine, precious metal objects, precious jewelry, valuable works of art and blood-stock;
 - (H) "In writing/written" means by letter, telex or facsimile;
 - (I) "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;
 - (J) "Person" includes persons or any body or bodies corporate;
 - (K) "Vehicle" is any motor vehicle (including but not limited to any lorry, van, trailer or car) and in respect of which the Company performs or is requested to perform any service or which enters the Company's depot in connection with such service;
 - (L) "Dollars" is Hong Kong Dollar.

OBLIGATIONS OF CUSTOMER

3. The Customer contracts and agrees with the Company on behalf of himself and as agent for all persons who have or may acquire any proprietary, possessory or other rights in respect of Goods, Containers, Vehicles or Vessels to be bound by the terms of these Conditions and by the terms of any applicable Tariff and warrants that he has the authority of all such persons to contract and to agree as aforesaid, and will be liable and responsible for the charges therefor.
4. The Customer shall give sufficient and executable instructions.
5. The Customer warrants that the Goods and Containers (including, but not limited to, weight, content, measure, quantity, condition, marks, numbers and value) are complete and correct and that the Goods and Containers are labelled in compliance with all laws, regulations and requirements which may be applicable.
6. The Customer warrants that the Goods and non-empty Containers are properly packed in a manner adequate to withstand normal handling or storage and in compliance with all laws, regulations and requirement which may be applicable.
7. The Customer undertakes to supply the Company with any information concerning the nature of the Goods and their packaging as the Company may reasonably request.

SPECIAL GOODS

8. (A) Unless otherwise previously agreed in writing, the Customer undertakes that no Dangerous Goods shall be delivered to the Company and that the Company shall not be caused to deal with or handle such Goods.
(B) If Dangerous Goods in the opinion of the Company or any Authority constitute a risk to other goods, property, life or health such Goods may without notice be destroyed or otherwise dealt with at the sole discretion of the Company and at the risk and expense of the Customer.
9. (A) Unless otherwise previously agreed in writing, the Customer undertakes that no Goods requiring temperature control will be delivered to the Company and that the Company shall not be caused to deal with or handle such Goods.
(B) If the Company agrees to handle Goods which require temperature control, the Customer undertakes to give written notice of the nature of the Goods and particular temperature range to be maintained and that the Container has been properly pre-cooled or pre-heated as appropriate, that the Goods have been properly stuffed in the container and that its thermostatic controls have been properly set. If the above requirements are not complied with the Company shall not be liable for any loss of or damage to the Goods to the extent caused by such non-compliance.
10. If the Customer is in breach of 8(A) or 9 above the Goods may without notice be refused receipt by the Company, be destroyed or otherwise dealt with at the sole discretion of the Company and at the risk and expense of the Customer.
11. Unless otherwise agreed in writing, the Customer undertakes that no Goods of High Value or requiring special use shall be delivered to the Company and that the Company shall not be caused to deal with or handle such Goods. If such Goods are delivered without such agreement, the Goods may be refused receipt by the Company or stored elsewhere at the Customer's own risk and expense.

GENERAL INDEMNITIES

12. The Customer shall defend, indemnify and hold harmless the Company against all loss, damage, liability, costs and expenses in respect of the acts or omissions of:
 - (A) any breach of the Customers undertaking in clauses 3 to 11 above;
 - (B) the act or omission of the Customer or the Owner or any person acting on their behalf;
 - (C) the Company complying with the instructions given by or on behalf of the Customer or Owner;
 - (D) the Company complying with the orders of an Authority with regard to the Goods;
 - (E) the handling, loading, stowage or unloading of the Goods by the Customer or Owner or any person acting on their behalf;
 - (F) the nature of the Goods, or
 - (G) the defective condition of or overweight Containers, Vehicles or Vessels.
13. The Customer shall defend, indemnify and hold harmless the Company against all duties, taxes and fines in respect of the Goods however arising. Notwithstanding the foregoing, if the duty or tax arises from the physical loss or damage to the Goods for which the Company is liable under clause 19 of these conditions, the Customer having indemnified the Company may include such duty or tax in any claim under clause 19.
14. (A) The Customer's bill of lading or other contracts of carriage, handling or storage shall include a provision prohibiting the making of any claim against the Company, its servants or agents, and a provision that the Company, its servants and agents shall have the benefit of any provisions in such contract of carriage, handling or storage excluding or limiting the liability of the Customer in respect of the Goods, Containers, Vehicles or Vessels.
(B) The Customer undertakes that no claim be made against any servant or agent of the Company which imposes or attempts to impose upon any of them any liability whatsoever in connection with the Goods, Containers, Vehicles or Vessels and if any such claim should nevertheless be made, to indemnify the Company against all consequences thereof.
(C) Without prejudice to the foregoing, every such servant or agent shall have the benefit of all provisions herein, as if such provisions were expressly for their benefit. In entering into this contract the Company, to the extent of those provisions, does so not only on his behalf, but as agent and trustee for such servants and agents.
(D) The Customer shall defend, indemnify and hold harmless the Company from and against all claims, costs and demands whatsoever and by whomsoever made or preferred in excess of the liability of the Company under the terms of these conditions and without prejudice to the generality of this clause the indemnity shall cover all claims, costs and demands arising from or in connection with the negligence of the Company, its servants and agents.
(E) In this clause, "agent" includes direct and indirect sub-contractors and their respective servants and agents.

RECEIPT

15. (A) Goods, Containers, Vehicles or Vessels are not received by the company until the person delivering has reported to the Company's reception office or area and in addition the Company has agreed to receive the Goods, Container, Vehicle or Vessel.
(B) The Company may refuse to receive or unload any Goods, Container, Vehicle or Vessel if the Company is not satisfied that arrangements have or will be made for the removal of such Goods, Container, Vehicle or Vessel.

DELIVERY AND DISPOSAL

16. (A) If any Goods, Container, Vehicle or Vessel is not removed from the Company's premises within 14 days of the Company having given notice in writing to the Customer, the Company shall be entitled to remove or dispose of such Goods, Container, Vehicle or Vessel at the sole discretion of the Company and at the risk and expense of the Customer.
(B) If at any time and in the opinion of the Company or any Authority constitute a risk to other goods, property, life or health such Goods may without notice be destroyed or otherwise dealt with at the sole discretion of the Company and at the risk and expense of the Customer.
(C) Instructions contained in the Customer's bill of lading, waybill, delivery order, or other documents shall entitle the Company to deliver to the bearer thereof notwithstanding that such bill of lading, waybill, delivery order or other document provides for delivery to a named party or to his order. The Company is entitled to assume that the person presenting such bill of lading, waybill, delivery order or other document is the person lawfully entitled to take delivery. The Company is not required to verify signatures or chops appearing on such bill of lading, waybill, delivery order or other document.

INSPECTION

17. The Company will inform the Customer of any discrepancies to Goods ascertained on receipt by or delivery from the Company and which are apparent upon reasonable inspection without opening up any packaging of the Goods.

LIABILITY

18. The Company shall not be liable for any loss, damage, delay, duty, tax or fine, indirect or consequential loss, non-performance of any obligation, misdelivery, misdirection, costs, expense of whatsoever nature and howsoever caused except as specified in clause 19 below.
19. Subject to the limitation of liability set out in clause 21 and elsewhere in these Conditions, to the extent that it is proved that the claim arises from the negligence of the Company, its servants, agents or sub-contractors, the Company shall be liable for the type of loss or damage set out below subject to the financial limits stated.
 - (A) Physical loss of or damage to or misdelivery of Goods, but not exceeding the least of:
 - (i) the value of the Goods lost, or
 - (ii) the reasonable cost of repair in the case of damage, or
 - (iii) 10 dollars per kg of the Goods lost or damaged or misdelivered.
 - (B) Misdirection of the Goods, but not exceeding the least of:
 - (i) the cost of transporting the Goods to the correct destination by the mode of transport that would have applied in the absence of such misdirection less the cost that would have been incurred in transporting the Goods to the correct destination in the absence of such misdirection, or
 - (ii) the value of the Goods misdirected, or
 - (iii) 10 dollars per kg of the Goods misdirected.
 - (C) Physical loss of or damage to the Customer's owned or leased Containers, Vehicles or Vessels, but not exceeding the lesser of:
 - (i) the value of the Container, Vehicle or Vessel, or
 - (ii) the reasonable cost of repair in the case of physical damage;
 - (D) Physical loss of or damage to property or any form other than that in (A) to (C), but not exceeding the least of:
 - (i) the value of the property lost, or
 - (ii) the reasonable cost of repair in the case of damage, or
 - (iii) 300,000 dollars each event or events arising from a common cause.
 - (E) In no event shall the Company's liability under one or more of sub-clauses (A) to (D) exceed 1,000,000 dollars per event or events arising from a common cause.
20. For the purpose of clause 19:
 - (A) the value of Goods is the invoice value plus freight and insurance if paid plus any Customs duty or tax incurred on the Goods in respect of their carriage and not recoverable from any Authority or, in the absence of such value, is the market value at the place where the Company handled the Goods;
 - (B) the value of the Customer's Container, Vehicle or Vessel is its lease value if leased by the Customer and if owned by the Customer it is the market value at the place where the loss or damage occurred;
 - (C) the value of property under 19(D) is the market value at the place where the loss or damage occurred.
21. The Company shall not have any liability whatsoever for claims arising from:
 - (A) the act or omission of the Customer or Owner or any person acting on their behalf;
 - (B) the Company complying with the instructions given by or on behalf of the Customer or Owner;
 - (C) the act or order of any Authority;
 - (D) insufficiency of the packing or labelling of the Goods or Containers except where such service has been provided by the Company;
 - (E) handling, loading, stowage or unloading of the Goods by the Customer or Owner or any person acting on their behalf;
 - (F) nature of the Goods;
 - (G) defective condition of or overweight Containers, Vehicles or Vessels;
 - (H) riots, civil commotions, strikes, lockouts, stoppage or restraint of labour;
 - (I) explosion, fire, flood, storm or other natural disaster;
 - (J) breakdown of or failure of any handling equipment of the Company, if the company has complied with such testing and maintenance standards for the equipment as are customary in the company's business and country;
 - (K) breakdown of, accident to, failure or interruption of or reduction in the mains electrical supply to the Company, it being agreed that the Company is under no obligation to have available any auxiliary power supply; or
 - (L) any cause which the Company could not avoid and the consequences whereof it could not prevent by the exercise of reasonable diligence.
22. If despite the exclusions of liability in clauses 18, 21 or elsewhere in these Conditions, the Company is held by a competent court to be liable in respect of any claim and such liability is not limited by the provisions of clause 19, the Company's liability shall be limited to twice its charges to the Customer in respect of its services to which to the claim is most closely connected.

CHARGES

23. (A) The Customer shall pay to the Company as agreed all sums immediately when due without deduction or deferment on account of any claim, counterclaim or set-off.
(B) When the Company is instructed to collect freight, duties, charges or other expenses from any person other than the Customer, the Customer shall be responsible for the same on receipt or evidence of demand and non payment by such other person when due.
(C) On all amounts overdue to the Company, the Company shall be entitled to interest, calculated at 4 per cent above prime rate of "The Hongkong and Shanghai Banking Corporation Limited" applicable during the period that such amounts are overdue.

LIEN

24. The Company shall have a particular and general lien on all Goods, Containers, Vehicles or Vessels, or documents relating thereto, in its possession for all sums due at any time from the Customer or Owner thereof and on giving 28 days written notice to the Customer, shall be entitled to sell or dispose of such Goods, Containers, Vehicles, Vessels or documents at the expense of the Customer and without any liability to the Customer and Owner and apply the proceeds in or towards the payment of such sums. After the Company has given notice of sale under the lien, the Company shall not be liable for any loss or damage whatsoever and howsoever caused.

TIME LIMIT

25. The Company shall be discharged of all liability:
 - (A) in respect of damage, unless if the Company has been given the opportunity to survey such damage except where it was not reasonably possible for the Company to be given such opportunity;
 - (B) in respect of loss or damage at the Company's depot of any Container, Vehicle or Vessel, unless written notice of such loss or damage is received within 30 days of the date when such Container or Vehicle left or, if lost, should have left the Company's depot;
 - (C) in respect of all claims, unless within 18 months suit is brought against the Company in the proper forum as specified under clause 30 and written notice thereof received by the Company.

MISCELLANEOUS

26. Any notice served by post shall be deemed to have to be given on the second day following the day on which it was posted to the address of the recipient of such notice last known to the Company.
27. The defences and limits of liability provided for by these Conditions shall apply in any action against the Company whether such action be founded in contract or tort.
28. If any legislation is compulsorily applicable to any business undertaken, these Conditions shall, as regards such business, be read as subject to such legislation and nothing in these Conditions shall be construed as a surrender by the Company of any of its rights or immunities or as an increase of any of its responsibilities or liabilities under such legislation and if any part of these Conditions be repugnant to such legislation to any extent such part shall as regards such business be overridden to that extent and no further.
29. No servants or agent of the Company shall have power to waive or vary any of the terms hereof unless such waiver or variation is in writing and is specifically authorized or ratified in writing by director or officer of the Company who has the actual authority of the Company so to waive or vary.

JURISDICTION AND LAW

30. These Conditions and any claim or dispute arising out of or in connection with the services of the Company shall be subject to Hong Kong law and the exclusive jurisdiction of the Hong Kong courts.

PART II : CARRIAGE UNDERTAKEN OR ARRANGED BY THE COMPANY

31. If the Company undertakes or arranges the carriage of Goods or Containers and any handling or storage connected therewith, it does so solely as an agent for the Customer and shall not be liable for the acts or omission of those engaged to perform the carriage, handling or storage. If the Company itself or its own servants have been negligent, the Company's liability shall be that provided under Part I of these Conditions, otherwise the Company shall, subject to clause 28 above, have no liability whatsoever and howsoever arising.
32. When engaging a person to perform the services of carriage, handling or storage, the Company may as agents enter into contracts with such persons on any terms whatsoever including terms less favourable than the terms in Part I of these Conditions.
33. In the event of a claim in respect of the Goods or Containers, the Company shall provide the Customer with particulars of the identity, services and charges of persons instructed to perform the carriage, handling or storage to the extent that such particulars are relevant to the Customer's claim.

PART III : COMPANY PROVIDING SERVICES FOR CLEANING, MAINTENANCE OR REPAIR OF CONTAINERS OR STORAGE OF EMPTY CONTAINERS AND ANY SERVICES CONNECTED THEREWITH

34. Subject to clause 28 above, if the Company provides services for cleaning, maintenance or repair of Containers or storage of empty Containers and any services connected therewith, the Company shall not be liable for any improper performance or non performance of such services, or any consequences whatsoever arising therefrom, except to the extent provided in this Part III.
35. (A) The Company's liability shall not exceed the reasonable cost of rectifying the services improperly or not performed by the Company, subject to a limit per Container of that Container's market value.
(B) At the Company's sole option, the company may rectify at its own expense the services improperly or not performed. If the Company exercises this option, or is not given an opportunity by the Customer to exercise this option, the Company shall not be liable for any costs incurred by the Customer in connection with the rectification of such services.
36. The customer undertakes to inspect the Container on redelivery to the Customer or such other person as is required. The Company shall not be liable and the Customer shall defend, indemnify and hold harmless the Company against any loss, damage, liability, cost and expense in respect of or arising from an improper or non performance of the Company's services which would have been apparent upon reasonable inspection of the Container at the time of redelivery and was not brought to the Customer's attention in writing at the time of redelivery. This indemnity is in addition to the indemnities in Part I of these Conditions.
37. The Company shall be discharged of all liability unless:
 - (i) notice of any claim is received by the Company in writing within 14 days, and
 - (ii) suit is brought in the proper form as specified under clause 30 and written notice thereof received by the Company within 9 months after the date of redelivery of the Container to the Customer or such other person as is requested.
38. The Company reserves the right to amend the conditions from time to time as it sees fit.