

ASSOCIATION OF MALAYSIAN HAULIERS

CONDITIONS OF CARRIAGE

2013

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

1. APPLICATION

These Conditions of Carriage (Container Hauler), (hereinafter referred to as “these Conditions”) shall apply to all contracts of carriage between the Carrier and the Customer. All Customers who choose to use the service of the Carrier in carrying and transporting their goods shall accept and deemed to have accepted these Conditions and abide by its provisions. The terms and conditions set herein shall override any other terms set by the customer and also any statutory provision and/or prior precedents.

2. DEFINITIONS

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

“Alternate dispute resolution” means any procedure agree by the parties for the resolution of disputes other than those involving formal arbitration or litigation

“Carrier” means the person (corporate or otherwise) who contracts with the Customer to carry the goods. However, carrier is not a common carrier and will accept goods for carriage only on these conditions. Contract means the Agreement between the Customer and the Carrier for the carrying out of the transport service including all documents expressly incorporated therein.

“Haulier” shall have the same meaning as the term “Carrier” mentioned above.

“AMH” means the Association of Malaysian Hauliers or its successors in title.

“Charges” means amount of money paid or to be paid by the Customer for services rendered by the Carrier.

“Community System” means the network system established by EDI Malaysia for any particular trading community on or through which any or all of the EDI Members transmit messages in connection with their trading activities.

“Consignee” means the person, firm or company who will collect the Goods from the Carrier.

“Consignment Note” means the document containing all the particulars of the Goods issued by the Carrier for the movement of the Consignment delivered to the Customer by the Carrier.

“Consignment” means any container, transportable tank, flat or pallets, and should be constructed to ISO (International Standards Organization), SIRIM (Standards and Industrial Research Institute of Malaysia) or other acceptable standards and maintained in a state that is safe for transportation.

“Contract” means the Agreement between the Customer and the Carrier for the carrying out of the transport service including all documents expressly incorporated therein.

“Customer” means any person or company or body incorporated under the law of any country sending or receiving or desiring to send and receive Goods by the services of the Carrier or its agents and includes unless the context otherwise requires, his principals, servants, agents (including but not limited to the forwarding agent), Consignee and owner of the Goods.

“Equipment” means prime movers, trailers, side-loaders and includes any other mechanical device used to transport and haul the container.

“Dangerous Goods” means Goods, which are of a dangerous, flammable, radioactive or damaging nature, and includes Goods, which are specified as dangerous goods published by the International maritime Organization (IMO) or any law for the time being enforced in Malaysia.

“Day” means any day Monday to Friday inclusive other than a statutory holiday including the delivery day and the day on which any claim or notification is first made.

“Delay” means failure by the carrier to deliver the goods within the agree time limit or if there is not agree time limit within the period of 60 days from the date upon which the carrier takes possession of the goods.

“Excepted Goods” means livestock, jewellery, furs, watches, precious metals and stones, treasury notes, bullion, cash, bonds, deeds, stamps, securities, manuscripts, paintings, documents and loans, safety razor blades, tin ingots, cigarette lighters, bottled perfumery, tobacco, cigars, cigarettes, bottled wines, spirits and the like.

“Fragile Goods” means the Goods that are of a brittle or delicate nature and are likely to break and includes without limitation glass, china and castings.

“Goods” means the cargo accepted from the Customer and includes any container not supplied by or on behalf of the Carrier.

“Loss” means the actual loss of the goods or failure by the Carrier to deliver the goods within 30 days of the agreed time limit for delivery or if there is no agreed time limit, within 60 days from the date on which the carrier took over the goods.

“Obnoxious Goods” means any of the following kinds of Goods which are not included in the category of Dangerous Goods: -

- a) substances which can cause discomfort to or adversely affect, personnel handling them;
- b) substances which will taint other cargo or containers in close proximity or which may necessitate the containers being deodorized or specially cleaned;
- c) Substances, which will damage other cargo by, contact or by sifting, e.g. carbons, graphite, white pigments, greases and other “dirty” cargo.
- d) Deliquescent cargo and/or cargo which readily takes up moisture even from the air or cargo in a moist or wet condition, e.g. wet salted hides;
- e) Cargo liable to infestation by insects, mites, weevils, or grubs or which might require fumigation;
- f) Cargo of liquid or semi solid nature and cargo liable to liquefy with a rise in temperature such as reasonably could be foreseen; and
- g) Any other Goods which in the opinion of the Carrier are likely to adversely affect other cargo or to cause personnel to object to handling them or to present any difficulty in handling or transport.

“Owners Risk” means that the goods are held upon the terms that the carrier shall be liable for any loss of whatsoever nature and as a consequence of the goods being in the Carrier’s possession. The Customer will indemnify the carrier against all claims that be made against the carrier arising from the carriage retention or storage of such goods.

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

“Government” means the Government of Malaysia.

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

“Request For Transport” or ROT means the same as RFD as stated above

“RM” means Ringgit Malaysia, the lawful currency of Malaysia.

“Royal Customs And Excise Department” means the Royal Malaysian Customs and Excise Department.

“Sub-contracting Parties” means all persons (other than the Carrier and the Customer) referred to in Conditions under Clause 9 and all its sub-clauses.

“Tariffs” means a published list of the Carrier’s haulage charges.

“Trailer” means the chassis used for the purpose of transporting a container.

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

3. CONTRACT OF CARRIAGE

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

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

4. AUTHORITY OF AGENTS

No agent or employee of the Carrier is permitted to alter or vary these Conditions in any way unless he or she is expressly authorized to do so by the Carrier.

5. THE CARRIER’S TARIFFS

Tariffs imposed for the services rendered by the carrier to the customer shall be mutually agreed between both parties.

6. THE CARRIER’S CHARGES

Payment of charges as per the Carrier’s applicable Tariffs has to be made in advance unless satisfactory arrangements have been made with the Carrier. The Carrier may grant at its sole discretion any credit facility arrangement to the Customer, in which case the payment is to be made within the specified period agreed between the Carrier and the Customer.

The Carrier's charges for carriage shall be payable by the Customer without prejudice to the Carrier's rights against the Consignee or any other person.

The Customer is given fourteen (14) days grace period to dispute any invoices billed to the Customer by the Carrier in written form failing which all invoices are deemed as final and conclusive evidence of the acceptance of the Customer of its indebtedness to the Carrier in the amount stated.

The Customer shall settle all charges by the Carrier within the agreed period without prejudice to the Carrier's rights against the Consignee or any other person liable for the charges. Should the customer fail to pay the charges within the period specified for payment, the Customer agrees to pay to the Carrier interest at the rate of one point five percent (1.5%) per month on the invoice value from the date of the invoice to the date of actual payment.

A claim or counter claim shall not be made the reason for deferring or withholding money payable or liabilities incurred to the Carrier.

The Customer shall pay the Carrier's charges for the detention of the Carrier's vehicles, containers or coverings or other equipment or for the use or occupation of other accommodation, whether before or after transit, unless the Customer proves that such detention or use or occupation has arisen from default of the Carriers. Any free time provided by the Carrier's applicable Tariff shall not be subject to detention charges.

The Customer shall be responsible and liable to pay to the Carrier its costs in respect of any delay encountered as a result of the Carriers being prevented from effecting delivery of the Goods for causes other than the Carrier's own negligence and shall pay to the Carrier its charges in respect of any frustrated or abortive journey occasioned other than by the Carrier's negligence.

The Carrier shall be entitled to impose an appropriate charge for supplying any document proving delivery requested by the Customer in respect of each Consignment.

Should there be no letter of guarantee and/or indemnity executed between the parties pertaining to the contract of carriage then it would be implied that the director of the customer shall guarantee and/or indemnify whatsoever payments due and outstanding by the customer to the carrier.

7. IMPOSSIBILITY OF PERFORMANCE

The Carrier shall be relieved from its obligation to perform the Contract to the extent that the performance of the same is prevented by failure of the Customer, events of Force Majeure, weather conditions or cause beyond the reasonable control of the Carrier.

The Carrier is not liable for the Performance of the Contract if it is unable to perform its obligation or effect Termination of the Contract due to an event of Force Majeure. In the event of the same, the Customer shall endeavor to help the Carrier in whatever ways to mitigate any effect that the same might have on the Performance of the Contract of both parties.

In the event of Force Majeure, any total or partial loss or damage to the Goods or Containers is the liability of the Customer and the Carrier shall not be responsible for any claims either from the Customer or any other third party for the loss or damage therein.

8. THE CARRIER IS NOT A COMMON CARRIER

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

9. PARTIES AND SUB-CONTRACTING

Where the Customer is not the owner of some or all of the Goods in any Consignment he shall be deemed for all purposes to be the agent of the owner or owners. The owner shall be liable for any act committed by the agent, which is incidental to or usual to the Contract although such act may not have been consented by or known to the owner.

The Carrier may employ the services of any other carrier for the purpose of fulfilling the Contract. Any other carrier shall have the like power to sub-contract on like terms.

The Carrier enters into the Contract for and on behalf of itself and its servants, agents and sub-contractors and its sub-contractors' servants, agents and sub-contractor, all of whom shall be entitled to the benefit of the Contract and shall be under no liability to the Customer or anyone claiming through him in respect of the Goods in addition to or separately from that of the Carrier under the Contract.

The Customer shall save harmless and keep the Carrier indemnified against all claims or demands whatsoever by whomsoever made in excess of the liability of the Carrier under these Conditions in respect of any loss, damage or injury however caused, whether or not by the negligence of the Carrier, its servants, agents or sub-contractors.

10. LOADING AND UNLOADING

Unless otherwise agreed in writing:

1. the carrier shall not be under any obligation to provide any plant, power or labour or other facilities (other than the normal loading and unloading) facilities of the vehicle being used

- to transport the consignment) in connection with the loading or unloading of any consignment.
2. the customer warrants and undertakes that any appliances or facilities required for loading or unloading the consignment which are not carried by the vehicle being used to transport the consignment will be provided at the customer's expense by the customer or by a third party on the customer's behalf. Such goods shall be accepted by the carrier for carriage only on condition that the customer had duly ascertained from the consignee that such appliances or facilities are available at the consignment's destination.
 3. where the carrier is called upon to load or unload any consignment requiring the use of special appliances or facilities the carrier shall be under no liability whatsoever to the customer for any damage howsoever caused, whether caused by the negligence of the carrier, its employees, servants, agents, successors in title or assigns or not and the customer shall indemnify the carrier against any claim or demand arising out of or connected either directly or indirectly with such damage
 4. the carrier shall not be required to provide loading or unloading services at locations outside of the customer's usual place of collection or delivery.
 5. the carrier or its employees, servants or agents shall decide at their sole discretion whether safe and adequate access for loading and unloading exists at the place of collection or delivery.
 6. the carrier shall not be liable for any loss or damage caused as a result of negligent acts committed by the consignor or consignee or their servants or agents in assisting with loading and/or unloading and the customer shall indemnify the carrier against any claim made against the carrier in respect of such loss or damage including claims for death or personal injury.
 7. the customer shall make available to the carrier upon request details of any risk assessment which may have been carried out at the collection and/or delivery addresses. The responsibility for carrying out such risk assessment shall be that of the customer and not of the carrier.

11. REQUEST FOR DELIVERY OF CONTAINER

The Carrier may accept Request For Delivery of containers provided it is made on an approved Request For Delivery form officially endorsed by the Customer making such a request.

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

12. CONSIGNMENT NOTE

Every consignment of Goods, except as otherwise arranged, shall be addressed and labeled in accordance with the Carrier's requirements and be accompanied by a Consignment Note containing such particulars as the Carrier may require. The Carrier shall, if so required sign a document prepared by the sender, acknowledging the receipt of the Consignment but no such document shall be evidence of the condition or of the correctness of the declared nature, quality, quantity or weight of the Consignment at the time it is received by the Carrier.

The Consignment Note shall be prima facie evidence of the receipt of the Goods by the Carrier in the case of the Goods packed in a container for export and movement between two inland sites. The prevailing document or documents in use at the collection point as agreed deemed to be agreed between the Customer and the Carrier or their agents shall be prima facie evidence of the receipt of the Goods by the Carrier in the case of import Goods packed in a container.

The Consignment Note shall be prima facie evidence of the delivery of the Goods by the Carrier in the case of goods packed in a container for import and movement between two inland points. The prevailing document or documents in use at the delivery point as agreed or deemed to be agreed between the Customer and the Carrier or their agents shall be prima facie evidence of the delivery of the Goods by the Carrier in the case of export Goods packed in a container.

No representation is made by the Carrier as to the weight, contents, measures, quantity, description, condition, marks, number of packages or value of Goods and the Carrier shall be under no responsibility whatsoever in respect of such description or particulars.

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

13. TRANSIT

Transit shall commence when the Consignment is handed to the Carrier at the agreed point of collection.

Transit shall end (unless otherwise previously determined) when the Consignment is tendered at the agreed place of delivery at the Consignee's premises.

Provided always: -

- a) That if no safe and adequate access or no adequate unloading facilities exist there, then transit shall be deemed to end at the expiry of one clear day after notice in writing (or telephone if so previously agreed in writing) of the arrival of the Consignment at the Carrier's premises has been sent to the Consignee;
- b) That when for any other reason whatsoever a Consignment cannot be delivered or when a Consignment is held by the Carrier to wait order "to be kept till called for" or

upon any like instructions and such instructions are not given, or the Consignment is not called for and removed, within a reasonable time, then transit shall be deemed to end; and

- c) The foregoing do not affect the right of the Carrier to raise detention charges for prime mover and trailer incurred (and any other staging, diversion, storage charges, futile trip charges incurred) as provided for in the Tariffs.

If the Carrier has made arrangement to deliver a container to the Customer at an agreed time, however, due to unforeseen circumstance the container is either delivered earlier or later than the agreed time, but within a reasonable time and if the Customer refuses acceptance or no representative of the Customer is present to accept the container, and the container is hauled back to the Carrier's premises, the Customer shall have to submit a new Request For Delivery of the container to his premises and the Customer has to bear the costs of the futile trip made earlier together with any other charges that may incur.

14. UNDELIVERED OR UNCLAIMED GOODS

When the Carrier is unable for whatsoever reason, to deliver a Consignment to a Consignee, or, as Consignee may order or where, by virtue of the proviso to Clause 13 hereof, transit is deemed to be at an end, the Carrier may sell the Goods and any payment or tender of the proceeds after deductions of all proper charges and expenses in relation thereto and all outstanding charges in relation to the carriage and storage of the Goods shall (without prejudice to any claim or right which the Carrier may have against the Customer otherwise arising under these Conditions) discharge the Carrier from all liabilities in respect of such Goods, carriage and storage.

Provided that: -

The Carrier do what is reasonable to obtain the value of the Consignment; and

The power of sale shall not be exercised where the name and address of the sender or of the Consignee is known unless the Carrier shall have done what is reasonable in the circumstances to give notice to the sender, or if the name and address of the sender is known to the Consignee then the Goods will be sold unless within the time specified in such notice, the Goods are taken away or instructions are given for their disposal by the sender.

15. METHODS AND ROUTES OF TRANSPORTATION

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

Use any means of transport and storage whatsoever;

Proceed by any route at his discretion (whether or not the nearest or most direct or customary or advertised route);

Load and unload the Goods at any place and store the Goods at any place;

Comply with any orders and recommendations given by the Government or authority or any person or body acting or purporting to act as or on behalf of the Government or authority or having under the terms of the insurance of the conveyance employed by the Carrier the right to give orders or directions; and

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

16. ROUTE SURVEY

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

17. GOODS SHUT-OUT / EXPIRY OF FREE PERIOD

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

18. PERFORMANCE OF CONTRACT

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

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

19. LIABILITY FOR LOSS OR DAMAGE

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

Unless the Haulier advises otherwise in writing to the Customer, the Haulier is deemed to be covered under Subrogation insurance. All claims whether for loss or damages however it may arise, whether from the customer or other third parties shall be claimed against the Customer's own insurer. Should there be justification for claim against the Haulier, the Customer's insurer shall then claim against the Haulier's insurer. The Customer shall make no direct claims against the Haulier unless provided for by the individual Haulier's insurers.

The Customer shall also never deduct in any manner either by direct debit or contra of account or any other method that reduces the payments due to the Haulier for services previously rendered, in any effort to off-set claims for losses, damages or penalties for delays and any other costs which may arise.

the amount of compensation for any one case shall not exceed RM\$3.00 per kilo gross weight of the Goods and container or RM\$100,000 per claim, whichever is lower.

In the case of loss or damage to any containers, the Haulier shall not be liable for any demurrage, detention, store-rent or any other incidental charges relating to the container beyond the claim for physical damage or loss of the container, from the day after the incident of damage to the container or from three (3) days after the day the container was handed into the Haulier's custody subjected to the limit for compensation under this clause.

Time Limits for Claims

The carrier shall not in any event be liable for: -

- a) Loss or damage to Goods/Containers unless it is advised in writing within three (3) days and the claim is made in writing within five (5) days after the termination of transit of the Consignment, or the part of the Consignment, in respect of which the claim arises.

- b) Non-delivery of the whole of the Consignment or part thereof unless it is advised of the non-delivery in writing within three (3) days and the claim is made in writing within seven (7) days after the Customer handed the Consignment to the Haulier.
- c) Losses/damages to Goods found in the container if the container's seal is intact upon receipt by the Customer

The Haulier shall in any event be discharged from all liability whatsoever in respect of the Consignment unless a suit is commenced within ~~a period of time of~~ one (1) year from the termination of transit or, in the case of loss, misdelivery or non-delivery of the whole or part of the Consignment, from the said seven (7) days referred to in Clause 19 (b.) above hereof.

Should the need arises for an inspection of the damage goods the customer is under the obligation to notify the carrier with prior notice of two (2) days for the sole purpose of a joint inspection. If the carrier is not sufficiently notified by the customer no claim can be made against the carrier.

No Third party report pertaining to damage goods will be acceptable by the carrier if the carrier's representative was excluded in the inspection of goods.

The carrier shall not be responsible for any misconduct and/or mischief committed by its driver should the driver commits any illegal acts which shall contravene any trite provision of the law

The carrier shall not be liable to pay the customer should there be any damage to the goods in respect of reefer (refrigerator) containers especially when there is proof that the damage was caused by the failure of the electronic system of the container.

Should the carrier discharge a container at a wrong depot the carrier shall not be liable to pay any charges to the depot owner and/or operator. It is incumbent on the depot to notify the carrier of the wrongful discharge

20. INDEMNITY IN RESPECT OF DELAY

The Haulier shall not be responsible or liable for any SSR, detention, store-rent, demurrage charges or any other penalties or any other costs or charges incurred as a consequence of any delay, howsoever such delays may have occurred, in delivery or collection of containers or goods or items or documents of any kind, whether such costs or charges shall be imposed by the Customer, Owner, trader or any other third party or regulatory or statutory organizations.

The Haulier shall not be liable for any direct, indirect or consequential losses or for loss of any general, specific or part of any market, customers or trade as a result of any delays howsoever such delays may have arise.

The Customer further indemnifies the Haulier against any claims or demands of compensation as a result of any consequences due to delay in delivery or collection of containers or goods or items or documents of any kind.

21. DETENTION CHARGES

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

22. WARRANTIES AND INDEMNITIES

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

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

- f. losses suffered by the carrier arising from any negligent act, negligent omission, negligent misdirection or negligent misstatement by the customer, consignor or consignee, its servants or agents
- g. claims of any nature for loss or damage resulting from the carriage of dangerous substances;
- h. claims and demands of any nature in respect of loss of or damage to the goods made by any Third party additional to or in excess of the limits of liability of the carrier set out in condition 19;
- i. any claims made or penalties imposed by the department of Custom & Excise in respect of dutiable goods and Police in respect of goods contravening the Dangerous Drugs Act.
- j. Claims and demands made by a Third party attributable to lack of authority on the part of the customer to enter into the contract upon these terms and conditions.
- k. Any loss suffered as a result of diversion of the delivery of the cargo.
- l. Losses suffered by the carrier as a result of damage and/or loss of container or any other haulage equipment including but not limited to trailer and gen set during the custody of the customer

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

The Customer agrees that he will not submit to the Carriers any Consignment container dangerous, verminous, infested, contaminated or condemned Goods unless he shall first have given to the Carrier in writing full details of the same and obtained the written agreement of the Carrier to the submission of such Consignment.

If the Customer fails to comply with sub-clause 22 (c.) above, the Customer will be responsible for and will indemnify the Carrier against all losses, damage and claims of whatsoever nature made upon the Carrier for which the Carrier may be or become liable arising from the tender of a Consignment all or part of which consists of dangerous, verminous, contaminated or condemned Goods including loss and/or damage sustained by the Carrier to its own property and injuries or loss sustained by servants, agents and/or sub-contractors of the Carrier whether or not caused by the negligence of the Carrier, its servants, agents or sub-contractors.

23. INSPECTION OF GOODS

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

If the container is FCL, load, counted and sealed, the Carrier will not be responsible for any loss or damage to the container.

24. SUBROGATION RIGHTS

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

25. TIME TO TAKE DELIVERY OF GOODS

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

26. GENERAL LIEN

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

27. INTERIM CARRIAGE

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

28. LAW COVERING THE CONTRACT

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

The parties shall agree the legal regime under which these conditions shall be construed and interpreted and the courts which shall have jurisdiction. In the absence of such agreement the contract shall be subject to and construed and interpreted in accordance with Malaysian Law and shall be subject to the jurisdiction of the courts in Malaysia

29. NON-COMPLIANCE

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

30. ALTERATION TO THE CONDITIONS

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

31. ARBITRATION

The parties will attempt in good faith to resolve any dispute or claim arising out of or relating to these Conditions through negotiations between the respective representatives of the parties who have authority to settle the same

If the matter is not resolved through negotiation the parties may attempt to resolve the dispute or claim through an Alternative Dispute resolution (ADR) procedure as recommended by the Association of Malaysian Hauliers or Kuala Lumpur Regional Centre of Arbitration (KLRCA)

Any arbitration that might take place will be subjected to the governing law at the material time particularly Arbitration Act 2005

32. ENACTMENTS OF LAW AND BY-LAWS

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

33. BAILEE FOR REWARD

The principle of bailee for reward and/or bailment shall not be applicable in the contracts of carriage between the carrier and its customer. The terms and conditions herein shall be binding on the parties.

34. USE OF FORMS

The use of customer's own contract forms, purchase orders, invoices or other forms or documents shall not derogate from or add to these conditions but shall be deemed to be supplemental thereto. For the avoidance of doubt and without prejudice to the forgoing in the event of any conflict between these conditions and the customer's own forms these conditions shall take precedence

35. VALIDITY

If any provision of these conditions is held by any competent authority to be invalid, unlawful or unenforceable in whole or part, the validity of the other provisions of these conditions and the remainder of the provision in question shall not be affected thereby

36. WAIVER

Failure or neglect by the carrier to enforce at anytime any of the conditions hereof shall not be construed nor deemed to be a waiver of the carrier's rights hereunder, nor in any way affect the validity of the whole or any part of these conditions, nor prejudice the carrier's rights to take subsequent action

37. FRAUD

The carrier shall not in any circumstances be liable in respect of a consignment where there has been fraud on the part of the customer or the owner or the servants or agents of either, in respect of that consignment, unless the fraud has been contributed to by the complicity of the carrier or of any servant of the carrier acting in the course of his employment

38. NOTICES

Any notice or other communication given or made under this Agreement shall be in writing and may be delivered to the relevant party or sent by pre-paid post or telecopier to the address of that party

Unless the contrary is proved, each such notice or communication will be deemed to have been given or made and delivered, if by post 48 hours after posting, if by delivery when left at the relevant address, if by telecopier upon transmission during normal business hours (otherwise on the next following business day) subject to the correct telecopier number being received on the transmission report, or if by electronic mail when actually received in the incoming mail box of the recipient.

39. ELECTRONIC DOCUMENTS

Should the parties to the contract of carriage engage themselves through electronic documents the documents must contained a valid electronic signature and/or any other valid representation to signify the document derives from the respective parties. Electronic

signature will mean data in electronic form which are attached to or logically associated with other electronic data and which serve as a method of authentication.

40. **INSURANCE**

The customer shall at all times ensure that they purchase the required insurance coverage for the goods transported by the carrier. The customer shall provide the insurance coverage to the carrier for its record. The carrier shall have no obligation to demand for the said insurance coverage. The carrier shall have no legal obligation to compensate and/or pay the customer any differential amount between the insurance coverage and the quantum of loss. The customer shall not withhold any payments pending to the carrier should there be any dispute towards any pending or subsisting insurance claim.

41. **CONFLICT**

Should there be any conflict arising between the terms and conditions herein with the customer's terms & condition or any other practice and/or provision of the law, it is agreed between parties that these terms & condition shall prevail and govern the whole business transaction.

42. **CHARGES**

- a. The carrier and customer shall agree to the charges for the services rendered;
- b. Should there be any extra services required from the customer out of the usual agreed scope of services the carrier shall be allowed to negotiate for further charges.

43. **OTHERS**

- a. Depot operators are under the obligation to notify the carriers within fourteen (14) days from the day of receipt of the containers if the containers are wrongly discharged at their depot.
- b. The carriers shall not pay the depot operator if the required notification is not given

- c. Drivers of the carriers shall not be expected to conduct detail inspection of containers on receipt. However, the drivers shall only carry out visual inspection as deem fit. Should the container be found to be damaged on certain parts of the exterior and interior the carrier shall not be held liable.