

## **GKE (Shanghai) Metal Logistics Co., Ltd.**

### **Standard Terms & Conditions**

#### *Applicability of these Conditions*

1. These General Standard Conditions ("Conditions") shall apply to all services ("Services") provided by GKE (Shanghai) Metal Logistics Co., Ltd. (including branch, representative office or affiliates) (collectively, "Company"). These Conditions shall be deemed incorporated in and form part of any contract or arrangement between the Company and any person at whose request or on whose behalf the Company provides any Service (including the party named as shipper, consignor or consignee on the Company's transport documents) ("Customer"), and which shall further be deemed to prevail over any conditions of contract of the Customer.
2. The Company may amend, vary or supplement these Conditions at any time and from time to time by giving notice thereof to the Customer. Any such amendment, variation or supplement shall take effect as from the date specified in such notice or in the absence thereof as from the date of such notice. Unless otherwise agreed in writing and signed by an authorised officer of the Company, no agent or employee of the Company has the Company's authority to waive or vary any of these Conditions.
3.
  - (a) Where there are operations and activities ancillary to the performance of the Services (including work performed by shipbrokers, stevedores, carriers and insurance agents), these Conditions may be supplemented by other conditions customary to the particular trade or stipulated to be applicable by the third party service provider.
  - (b) 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 any cargo to which the Services are provided by the Company, including any packaging, pallet and container supplied by the Customer ("Goods") nor for any physical services in relation thereto, and acts solely on behalf of the Customer to secure such services by establishing contracts with third parties so that direct relationships are established between the Company and such third parties. When acting as an agent, the Company has the authority of the Customer to enter into contracts with third parties on the Customer's behalf and to do such acts so as to bind the Customer to such contracts (notwithstanding any departure from the Customer's instructions). The Company shall not be liable for the acts or omissions of such third parties. In the event of any conflict between such other conditions and these Conditions, it shall be for the Company to decide which provisions it claims the benefit of.
4.
  - (a) If any legislation is compulsorily applicable to any Services, these Conditions shall as regards such Services be read as subject to such legislation.
  - (b) Subject to Clause 4(a), where a "bill of lading" is issued by or on behalf of the Company and provides that the Company contracts as a carrier, the provisions set out in such document shall be paramount insofar as such provisions are inconsistent with these Conditions.

#### *Contract Formation*

5. A contract between the Customer and the Company shall only come into effect on the date of the Company's written acceptance of any order or instruction from the Customer (incorporating

these Conditions).

6. The Customer is required to issue to the Company all orders and instructions regarding the Goods in writing. Verbal or telephone communications or arrangements shall only be binding on the Company if immediately followed by a written confirmation from the Company. The Company has absolute discretion whether or not to accept any order or instruction, and is not obliged to provide any reason for rejecting any order or instruction.
7. In entering into any transaction or business with the Company or providing instructions to the Company:
  - (a) the Customer warrants that it is the owner or a duly authorised agent of the owner of the Goods, and has full authority to accept these Conditions for itself and for and on behalf of all other persons who are interested in the Goods, and to perform its obligations hereunder. Where the Customer acts as the agent of the owner of the Goods, the Customer also accepts personal liability to the Company (but without prejudice to any rights or remedies of the Company against the owner of the Goods) such that in respect of such transaction or business, the Company is entitled to enforce its rights or remedies against the Customer and the owner of the Goods jointly and severally;
  - (b) the Company is hereby authorised by the Customer to act on behalf of the Customer to select, engage and enter into contract or arrangement (whether in the name of the Customer or otherwise) with any third party for the carriage of goods by any route or any carrier, and for storage, packing, unpacking, transportation, transshipment, loading, unloading and any other handling of the Goods by any person at any place and to do such other acts for any purpose related to or incidental to the Customer's instructions. The Company is further authorised to depart from the Customer's instructions if in the Company's opinion, such departure is necessary or desirable in the Customer's interest or is otherwise expedient. The Customer expressly agrees to be bound by any act, contract or arrangement done or entered into by the Company pursuant to the aforesaid authorisations; and
  - (c) the Customer agrees and acknowledges that the Company shall be entitled to sub-contract on any terms the whole or any part of the Services and any and all duties whatsoever undertaken by the Company.

#### *Instructions*

8. The Company is not a common carrier and shall accept no liability as such. The Company may refuse at its sole and absolute discretion to accept any Goods for carriage without assigning any reason. However, once an order or instructions has been accepted by the Company, the Customer may not change or terminate the order or instruction without the Company's prior written consent. If the Customer terminates such order or instruction unilaterally without providing the Company with written notice of at least 2 working days prior to the date the services are scheduled to be performed, the Company shall be entitled to claim against the Customer for the full sum payable for the order or instructions duly accepted by the Company, and for all losses, expenses, fines, penalties and damages incurred or suffered as a result of such termination.
9. The Company shall perform all orders and instructions in such manner as it deems fit and in accordance with these Conditions including the right to determine the route and procedures relating to the handling, storage, custody, transportation, release, delivery and/or forwarding of any Goods, or the right to engage the services of a third party to carry out any part of the orders and instructions. If the Company takes the view that it is necessary or desirable in the interests of the Customer to depart from the Customer's order or instruction, the Company shall be at liberty to do so. All costs and expenses reasonably incurred thereby shall be for the Customer's account.
10. Unless otherwise agreed upon, or unless prevented by special circumstances, the Company shall commence executing accepted instructions, if possible, not later than the next working day after

receipt of the necessary documents (e.g. bills of lading and delivery orders) on the understanding that if the necessary instructions and documents for executing orders are received after 1500 hours (Beijing time) on any working day (between Mondays to Fridays only), the next working day shall count as the day of receipt.

11. If the Customer has instructed the Company that the Goods be stored in a specified quantity, or delivered at a specified time/in a certain quantity, or collected at a certain time but the Customer cancels the instructions without giving the Company prior written notice of at least 2 working days or fails to deliver or collect the Goods:
  - (a) the Customer shall be liable for all costs and expenses incurred by the Company as a result of labour and equipment arranged for execution of the specified order;
  - (b) the Company shall be at liberty to store the Goods at the sole risk and cost of the Customer whereupon the Company's liability in respect of such Goods shall cease; and
  - (c) the Company shall be entitled (but not obliged) to sell or dispose, at the Customer's cost, the Goods which in the sole opinion of the Company (i) cannot be delivered as instructed after expiry of a 7-day written notice from the Company to the Customer; or (ii) have perished or are in the immediate prospect of doing so or have caused or may reasonably be expected to cause loss or damage to any person or property; or (iii) contravene applicable laws and regulations.
12. Time shall not be the essence of any contract in relation to the performance of any Services by the Company under these Conditions. The Company shall arrange, at its sole discretion, the rate of speed for delivery of the Services which shall as much as possible commensurate with the Customer's requirements save that the Company shall not be liable for any loss, damage or expense incurred for and on behalf of or by the Customer should the rate of speed at which the Services are delivered is slower than that required by the Customer.

#### *Delivery of Goods*

13. The Customer shall ensure that the documents required for receipt, dispatch, and instructions, shall be delivered to the Company on or prior to delivery of the Goods to the Company.
14. (a) Delivery of Goods which are done during the Company's ordinary working hours shall be charged at the Company's prevailing tariff rates. If the Customer requires work to be executed outside the Company's ordinary working hours, the Company has the right to decide whether or not it accepts such instruction, and if it does, any additional charges incurred thereby shall be borne by the Customer.
- (b) The Customer shall be additionally liable for (i) surcharge/summons due to incorrect weight declaration of the Goods by the Customer; (ii) trucking charges for delivery to any area outside the agreed area; (iii) diesel surcharge; (iv) crane and forklift services; (v) container repairs and cleaning; (vi) cost of certified lifting team for any operation involving hydraulic truck crane; (vii) police escort for transportation of oversized/out of gauge cargo; (viii) charges/penalties payable to any governmental authorities; (ix) costs/charges/penalties for cancellation/termination of, and changes to, any instructions by the Customer; and (x) all other charges including demurrage charges, detention charges, shipping charges (LCL, FCL), custom duties, cargo insurance, and GST.

#### *Description of Goods*

15. Unless otherwise agreed in writing, all Goods shall be presented by the Customer in good condition and securely packed, and the name and address of the consignee clearly stated. Full written particulars and instructions must be furnished (including number and type of container, weight and value), and any risks to be insured against amounts to be covered.

16. For purposes of preparing any document relating to the Goods (including the Company's written confirmation of receipt of the Goods for or in storage ("Storage Confirmation")), the Company shall be entitled to rely upon particulars (e.g. content, measurement, nature, quality, weight, quantity, serial numbers, marks, and value) provided by the Customer even if the Goods have been counted, weighed or measured in the presence of any of the Company's agents or servants and even if the Company may have known the nature, quantity or other particulars thereof.
17. Save as otherwise agreed with the Company in writing, the Company shall not be obliged to check whether samples are identical with the lot or check that the Goods correspond to the description/quantity provided by the Customer; or make any declaration for the purpose of any statute, convention or contract with regards to the quantity/nature/value/purpose of delivery of the Goods. If the Customer requires a physical stock take or check of the Goods, the Company shall be entitled to charge for such Service.
18. If the Company should for any reason require proof of the nature, condition, quantity, weight or value of the Goods or any other particulars notwithstanding any prior declaration by the Customer, the Company may for this purpose may break bulk and open packages to examine Goods when they are presented and at any other time. Any cost or expense incurred in connection with such examination shall be borne by the Customer.
19. If particulars of the Goods were not furnished or inaccurate or unclear, or if the premium was not paid upon notification, the Company shall be absolved from all responsibility for any loss or misdelivery of the Goods. If instructions are given to the Company to insure the Goods where particulars thereof were not furnished or are either inaccurate or unclear, the Company shall not be under any responsibility for not insuring the Goods or for any incorrect insurance.

#### *Storage of Goods*

20. Pending forwarding or delivery, the Goods may be warehoused or otherwise held at the risk of the Customer at any warehouse owned or operated by or on behalf of the Company at any place and the cost therefor shall be for the Customer's account. Unless otherwise agreed upon, the Company shall be at liberty to decide how and where the Goods are to be stored and shall at any time be entitled to transfer the Goods to another storage place. The cost of such transfer and the risk of transport shall be borne by the Company, unless the transfer has been effected in the interest of the Goods, or through circumstances beyond the Company's control. If the Goods are transferred to another storage place, the Company shall notify the Customer, but failure to notify the Customer shall not give the Customer any right of claim against the Company.

#### *Access to Goods*

21. The Company shall give to the Customer and/or any persons authorised by the Customer access to the place of storage of the Goods subject to the following conditions and any other formalities prescribed by the relevant authorities being complied with:
  - (a) all persons visiting the place of storage must comply with the Company's regulations;
  - (b) access is only provided during ordinary working hours at the Warehouse Facilities and with attendance by an employee or agent of the Company; and
  - (c) the Customer shall be liable for any cost of attendance incurred in relation to such visit and for any damage caused directly or indirectly by such persons.

#### *Dangerous Goods*

22. The Company shall not accept or deal with any noxious, dangerous, hazardous or inflammable or explosive goods or any goods likely to cause damage ("Dangerous Goods"). The expression "goods likely to cause damage" includes goods likely to harbour or encourage vermin or other pests.

23. If the Company however agrees in advance to accept any Dangerous Goods under these Conditions, the Customer shall ensure that the Dangerous Goods are accompanied by a full declaration of their nature and contents, and properly and safely packed and labeled in accordance with applicable laws and regulations for the time being in force in the relevant jurisdiction(s) including ensuring that all such packages are clearly and indelibly marked to show the hazardous nature of their contents.
24. Notwithstanding that the Company may have accepted the Dangerous Goods under arrangement previously agreed between the parties in writing, the Customer agrees that:
  - (a) the Dangerous Goods may be so destroyed or otherwise dealt with by the Company at its sole discretion and in any way deemed fit by the Company at the Customer's risk and expense on account of risk to other goods, property, life or health; and
  - (b) the Company shall be fully indemnified against all claims for damage, loss or injury to any property or persons caused by the Dangerous Goods, or any other perishable or special goods delivered to the Company in accordance with these Conditions.

#### *Removal of Goods*

25. The Company shall, after receiving full payment of all monies due and owing to the Company, allow the Goods stored with the Company to be released to the Customer or its agent. All costs and expenses in connection therewith shall be borne by the Customer.
26. The Company shall only be bound to any assignment or transfer made by the Customer with any third party in respect of any Goods stored with the Company only if:
  - (a) the Company has received in full all monies due and owing to it and prior written notice of the assignment or transfer; and
  - (b) the Customer procures that the third party enters into a new contract with the Company in respect of the storage of the Goods with the Company until the release thereof to such third party in accordance with these Conditions. Upon the new contract taking effect, the existing contract between the Company and the Customer in respect of the Goods or part thereof so transferred shall automatically terminate.
27. The Company may at any time remove the Goods received for storage prior to the expiry of the storage period, if in the opinion of the Company, there is a valid and/or urgent reason for such removal, e.g. if the Customer has consistently failed to comply with one or more provisions of these Conditions, or if the Company is of the opinion that the Goods is or is likely to cause loss and damage to other goods, storage place and equipment, or harm or injury to person(s); or if the Goods are perishable or liable to inherent changes which in the Company's opinion is or is likely to cause a decrease in value of the Goods, and/or the Customer has neglected to give instructions for preventing or coping with such situation.
28. The Customer shall remain liable for storage charges up to and including the date the Goods are released from the place of storage by the Company. If the Goods in the Company's custody are destroyed by fire or other causes, the date of destruction shall count as the date of release.

#### *Insurance*

29. Unless expressly agreed with the Customer in writing, the Company shall not be obliged to arrange for insurance in respect of the Goods.
30. By giving instructions for arranging the insurance, the Customer shall be deemed to have appointed the Company as its agent to make all arrangements with the insurer. When acting as an agent of the Customer by virtue of this Clause, the Company shall be entitled to collect the amount of any claims but shall only be obliged to pay the compensation received by it to the Customer after deducting all monies due and owing to the Company.

31. If the Company has agreed with the Customer that it shall arrange for insurance:
- (a) all such insurance effected shall be subject to the usual exceptions and conditions of the policies of the insurance company or underwriters, and the Customer shall be liable for all premium payments for any insurance coverage on the Goods;
  - (b) the risks to be covered shall be clearly stated by the Customer or the Company's estimate of the current value of the Goods. The Customer's valuation of the Goods to be insured shall be supported by proof thereof as the Company may reasonably require; and
  - (c) the Company shall not be responsible as regards the choice of the insurer and its ability to pay. Nor is the Company under any obligation to effect a separate insurance on each consignment but may declare it on any open or general policy.
32. If the assistance of the Company for assessing any damage to or loss of the Goods caused by fire or by any other cause is necessary, the Company may render such assistance against payment of all costs and expenses incurred and a fee for its assistance, including upfront cash payment or provision of security for all such monies prior to rendering such services.

#### *Charges, Payment Terms and Taxes*

33. All monies due and owing to the Company by the Customer for work done or to be done in connection with the Goods, including all applicable taxes, duties, levies, demurrage, and fines, shall be payable in accordance with the Company's invoice or as may be agreed otherwise between the parties without any set-off, rebate, claim or counterclaim whether arising under contract or otherwise. All risks of fluctuations in foreign currency exchange shall be borne by the Customer.
34. Unless otherwise agreed, all quotations are given on the basis of immediate acceptance by the Customer and are subject to changes or withdrawals by the Company, and notwithstanding acceptance of the Company's quotations, the Company may revise quotation or charges with or without notice in the event of changes occurring in currency exchange risks, freight rates, insurance premiums or any other charges applicable to the Goods.
35. When Goods are accepted or dealt with upon instructions to collect freight, duties, charges or other expenses from the consignee or any other person, the Customer shall remain responsible for the same if they are not paid by such consignee or other person immediately when due.
36. Unless otherwise agreed in writing by the Company, all invoices rendered by the Company shall be settled within 30 days from the date of the invoices notwithstanding any enquiries, complaints or disputes on them. Interest at 2% per month (calculated on a calendar month basis) shall be payable on all overdue accounts until payment in full is made. The Customer may direct any enquiry on any invoices to the Company within 7 days from the date of the invoice, failing which it shall be deemed to have confirmed that the invoices is correct for all purposes.
37. The Customer shall be charged with any expenses incurred by the Company in complying with any regulations or in complying with any other statutory or regulatory duties imposed upon it from time to time in relation to the Goods. If the Company has to commence legal proceedings for recovery of payment of its invoices, the Customer shall be liable for all costs and expenses (including legal costs on a full indemnity basis) incurred by the Company in connection therewith.

#### *Security*

38. The Company may, at the expense and risk of the Customer, require the Customer to furnish a deposit or guarantee for monies in connection with the performance of any Services.

### *Lien*

39. Save as otherwise provided in these Conditions, the Company may enforce its lien on all Goods (and documents relating to such Goods) if the following requirements are satisfied:
- (a) the Customer or any other person known to claim an interest in the Goods shall have been notified. The notification shall include an itemised statement of the claim, a description of the Goods subject to the lien, a demand for payment within a specified time not less than 14 days after receipt of the notification, and a conspicuous statement that unless the claim is paid and collected within th at time, the Goods shall be advertised for sale and sold by public or private sale of the goods, in bulk or in packages, on any terms that are commercially reasonable and at a specified time and place;
  - (b) on expiry of the time given in the notification and the Company has not been paid the outstanding monies due and owing to it and the Goods are not collected, an advertisement of the sale shall be published in a daily newspaper of general circulation where the sale is to be held, including a description of the Goods, the name of the person on whose account the Goods are being held, and the time and place of the sale; and
  - (c) the proceeds of the sale shall be set off against all monies due and outstanding to the Company and the costs and expenses incurred by the Company in conducting the sale including any storage charge for the Goods at the same rate agreed prior to the exercise of its right of lien or at the rate in force immediately prior to termination. Any balance thereto shall be paid to the Customer or any person to whom the Company would have been bound to deliver the Goods. In the event of a shortfall, the Company shall be entitled to claim for such shortfall from the Customer.
40. Before any sale pursuant to Clause 39(b), any person claiming a right in the Goods may pay the amount necessary to satisfy the lien and the reasonable expenses incurred by the Company under Clause 39(a). In that event, the Goods may not be sold but shall be retained by the Company subject to its receipt of all monies due and owing to the Company in connection with the Goods.
41. The Customer agrees and acknowledges that:
- (a) the right of lien provided to the Company under these Conditions ranks in priority to any other security right that it may give to any other person in relation to the Goods and are in addition to all other rights allowed by law to the Company against the Customer for monies due and owing to the Company; and
  - (b) in exercising its rights of lien in accordance with these Conditions, the Company shall be deemed to have sold the Goods in a commercially reasonable manner if it sells the Goods in the usual manner in any recognised market therefor, sells at the price current in that market at the time of the sale, or otherwise sells in conformity with commercially reasonable practices among dealers in the type of the goods sold. The fact that a better price could have been obtained by a sale at a different time or in a method different from that selected by the Company is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner.

### *Indemnity*

42. The Customer shall indemnify and hold harmless the Company from any loss, damage, cost, claim or expenses suffered or incurred by the Company and its directors, employees, agents and sub-contractors (including all legal costs calculated on an indemnity basis) from or in connection with:
- (a) any defects in the Goods and/or packing which have not been notified to the Company at the time of delivery to the Company; or

- (b) the Customer's instructions or implementation thereof, or inaccurate, incomplete, obscure and inadequate documents, information and/or instructions provided by the Customer, or delay on the part of the Customer in furnishing the relevant documents and instructions to the Company; or
  - (c) any general average or any claims of a general average nature which may be made on the Company and the Company may provide such security as required by the Company in this connection.
43. The Company and Customer further agree and acknowledge that the Goods moving by:
- (a) airfreight is subject to specific international treaties and the Customer's recovery of any loss or damage is against the airline carrier and limited in accordance with such treaties. The Customer shall indemnify, defend and hold harmless the Company against any claims for loss or damage to the Goods incurred while in the airline carrier's possession;
  - (b) seafreight is subject to the applicable international treaties, and that the Customer's recovery of any loss or damage is against the seafreight carrier and limited in accordance with these or any other conventions that may be applicable. The Customer shall indemnify, defend and hold harmless the Company against any claims for loss or damage to the Goods incurred while in the seafreight carrier's possession; and
  - (c) airfreight or seafreight may necessary involve a part of transport undertaken by other means in order to comply with the terms of carriage under any contract between the parties. Where this is so, and no international treaty is applicable which covers the additional transport, the Customer's recovery of any loss or damage is against the carrier and limited in accordance with the convention applicable for the majority of the transport, even where that convention does not envisage liability of the kind of transport concerned. The Customer shall indemnify, defend and hold harmless the Company against any claims for loss or damage to the Goods incurred while in the possession of the third party carrier where such carriage was necessary in order to comply with the terms of the contract.

*Exclusion, and Limitation, of Liability*

44. All services shall be performed by the Company for the Customer's account and risk. Unless such loss, damage or deterioration is proven to have been caused by fraud or gross negligence or wilful default of the Company or its employees, agents and subcontractors or falling within Clause 51 (force majeure), the Company shall not be liable whether in contract, tort or otherwise for any loss or damage to or deterioration in the Goods including:
- (a) any loss, damage or deterioration of any Goods which have been stored on open ground or which can only be stored on open ground or which the Company customarily stores on the open ground;
  - (b) any loss or damage whatsoever arising from the act or omission of the Customer or any person authorised thereby, or the Company's compliance with any Customer instruction, or insufficiency of preparation, packing, stuffing, storage, containerisation, labeling or marking of the Goods (except where such Services have been provided by the Company pursuant to these Conditions);
  - (c) any loss or damage caused by or in connection with destroying, jettisoning, abandoning, unloading, selling or otherwise dealing with the Goods or part thereof which in the opinion of the Company is necessary or advisable for the safety or security of any person or property, or due to theft or burglary.
45. Notwithstanding any other provision of these Conditions, the Company shall not in any event be liable for the following:



- (a) consequential, special, indirect, incidental or exemplary damages, costs, expenses or losses (including loss of profits, opportunity costs, business or anticipated savings or loss of market) whether in tort, contract, under statute or otherwise by reason or in connection with any Services performed in accordance with these Conditions;
  - (b) loss or damage to the Goods whilst the Goods are in transit, possession, control or custody of steamship companies, railways, airlines or other carriers. If the Goods are landed from any vessel in a damaged or pillaged condition and an examination might be held or other action taken by the Company in respect of thereof, no responsibility attaches to the Company for any failure to hold such examination or take such other action unless the Company has been given sufficient notice to enable it to arrange for such examination or for the taking of such other action as the case may be; and
  - (c) loss or damage to Goods which are of a fragile nature, antiques, works of art and pictures, precious metal objects and jewellery, precious stones, bank notes, coins, travellers cheques, computer data, cards and documents entitling the holder to receive cash, perishables, live animals and radioactive cargoes bullion even where the loss or damage has arisen from negligence of the Company or its agents.
46. Subject to Clauses 44 and 45 and unless otherwise agreed in writing by the Company, the Company's total liability to the Customer whether in contract, tort (including negligence or breach of statutory duty) or otherwise for any loss, damage or liabilities caused or arising from any breach or failure of the Company in performing its obligations to the Customer hereunder shall be limited to the lesser of either:
- (a) the cost price of the Goods in respect of which a claim arises (as evidenced in the cost invoices or purchase contracts); or
  - (b) a sum calculated at the rate of \$5 per kilogram of the weight of the Goods in respect of which the claim arises;
- subject always to a maximum sum of \$100,000 in any event in respect of any one claim.
47. For purposes of these Conditions, the weight of the Goods shall be measured on a metric tonnage basis in accordance with the Company's standard practice, and the cost price of the Goods shall be calculated by reference to the invoiced cost of the Goods (excluding freight and insurance) or in the absence of any invoice, by reference to the normal cost of goods of the same kind and quality.
48. Compensation calculated in accordance Clause 46 shall be the Customer's sole and exclusive remedy against the Company for any loss, damage or expense suffered by the Customer. Nothing in these Conditions shall apply to limit or restrict the amount recoverable from the Company as compensation for any death or personal injury caused by the negligence or breach of duty (statutory, contractual or otherwise) of the Company.

#### *Notice of Claims*

49. All claims for damage or loss to, or misdelivery or non-delivery or delay in delivery of, any Goods shall be made in writing to the Company within 7 days after delivery of the Goods alleged to be damaged or in the case of Goods alleged to be lost or which the Company fails to produce, within 7 days after the time when the Goods should in the ordinary course of events have been released or in any other case, within 7 days from the date of the event giving rise to the claim. The Company shall be under no liability unless such claim is made within the time stipulated.
50. Unless applicable mandatory laws provides otherwise, any right of action against the Company shall be extinguished if the claim or suit was not brought in the proper forum and written notice thereof received by the Company within 9 months from the date the Goods arrived (or should have arrived) at the destination or the date the Company notifies the loss of the Goods to the Customer, whichever date is the earlier.

### *Force Majeure*

51. No party shall be liable for any delay or other non-performance resulting from circumstances or causes beyond its reasonable control, including the following events which shall, *inter-alia*, be regarded as *force majeure* events: war, threat of war, official action, government measures, requisitioning, seizure, strike, lock-out, quarantine, civil disturbance, riot, looting, sabotage, interference with communications, lack of transport, labour and/or storage, interruption of power supplies, mechanical failure of vehicle or truck, storm, fog, lightning, flood, high and low tide, frost, ice, heat, fire, explosion, nuclear radiation, water used against fires, smoke, loss, subsidence, collapse, water seepage, leakage, damp odor, stench, damage through rats, mice, insects and other creatures, natural properties of goods, changes in quality, spontaneous deterioration, self-generated heat, pulverization, combustion, explosion, drying, mould, yeasts, leakage, rot and mildew, rust and sweating, breakage of glass/wickered bottles/flasks/cast - iron/other brittle articles and generally every external calamity.
52. If any *force majeure* event prevents, hinders, or delays the Company's performance of any service for a period exceeding 3 months, the Company may, notwithstanding any provisions herein and at its sole option, terminate any agreement for the provision of any service with immediate effect and without any further liability to the Customer, the warrant holder or any other person entitled to the goods.

### *Termination*

53. Either the Company or the Customer may terminate any contract or arrangement made between them if the other shall be bankrupt, make an assignment for the benefit of its creditors, enter into any arrangement or composition with its creditors, or go into liquidation. Notwithstanding any provision herein, the Company reserves the right to terminate any contract or arrangement at any time by serving prior written notice of at least 30 days on the Customer.

### *General*

54. Any notice required to be given pursuant to these Conditions shall be deemed to have been validly given if addressed to the party to whom the notice is given and sent by prepaid registered post or delivered by hand to the address of such party above given, or to its last known address, and such notice shall be deemed to have been served on the recipient on date of service if delivered by hand, or upon the expiry of 48 hours after the date of posting if sent by prepaid registered post. Whether or not the Customer expressly acknowledges receipt, the Customer shall be bound thereby so long as the Company can show that same has been forwarded by ordinary despatch, facsimile, electronic mail, or post.
55. A person who is not a party to any contract or arrangement subject to these Conditions shall have no right under [] to enforce any of these Conditions.
56. If any part of these Conditions is found to be invalid, illegal or unenforceable under any enactment or rule of law or by a competent court or tribunal in any jurisdiction, such part shall be held ineffective to the extent of such invalidity, illegality or unenforceability without invalidating or otherwise affecting the other provisions and these Conditions shall be construed as if such invalid, illegal or unenforceable part had never been contained herein. Each provision hereof is to be construed as a separate limitation applying and surviving even if for any reason, one or more of the said provisions is held inapplicable or unreasonable in any circumstances.
57. The Customer may not assign or transfer the benefit of, and rights under, any contract made with Company without the Company's prior written consent (which consent may be subject to such additional terms as the Company deems necessary).
58. The contract made between the Company and the Customer which incorporates these Conditions shall constitute the entire agreement between them, and supersede all previous oral and written agreements between them in relation to the subject matter hereof.

59. The Customer shall not use (other than for the purpose of utilising the Service) or disclose to any person any information relating to the Company or any Services provided by the Company or its agents/sub - contractors pursuant to these Conditions other than information which is or has become publicly available otherwise than through a breach of any obligation of the Customer.
60. The Customer hereby consents that the Company shall be entitled to use in any manner and for any purpose, or to disclose, information or data provided by or relating to the Customer to any other person in connection with the Company's performance of obligations under these Conditions and/or compliance with applicable laws.

#### *Governing Law*

61. These Conditions shall be governed by, and construed in accordance with, the laws of China, save that local mandatory laws of the site of the warehouse in which the Goods are stored or the site of performance of the relevant services shall apply to the performance by the Company of the affected obligation or service pursuant to these Conditions.

#### *Arbitration*

62. All disputes arising out of or in connection with any contract or arrangement subject to these Conditions which cannot be settled by discussion and mutual accord between the Company and the Customer shall be referred by either party to be finally resolved by arbitration in Shanghai in accordance with the Arbitration Rules of the Shanghai International Economic and Trade Arbitration Commission (i.e. Shanghai International Arbitration Center, "SHIAC") for the time being in force, which are deemed to be incorporated by reference into these Conditions. The arbitration tribunal shall comprise a single arbitrator to be mutually appointed by the parties or failing such agreement, by the Chairman of SHIAC. The arbitration shall be conducted in the Chinese language.

## ANNEX 1

### RULES GOVERNING ISSUE OF WAREHOUSE RECEIPT BY THE COMPANY

- (i) A Warehouse Receipt issued by the Company is a numbered, stamped and signed document on which the Company certifies that the corporate entity named thereon or the last known holder (as defined below) shall have the right to receive or transfer the Goods mentioned therein, subject to the Company's claim/lien over the Goods for all outstanding charges, and all customs and formalities prescribed by the authorities for delivery being complied with. All Warehouse Receipts constitute title to the Goods covered thereunder, and are made out "to order".

#### *Issue of Warehouse Receipts*

- (ii) The Company shall be entitled to refuse to issue a Warehouse Receipt or allow any transfer of Goods mentioned in any Warehouse Receipt unless all monies due and owing for such Goods have been paid in full to the Company, or there appears to be other grounds for the refusal.
- (iii) In determining the nature and quantity of the Goods to be shown on the Warehouse Receipt, the Company shall only be obliged to look to its own records which save for manifest error, shall be deemed as definitive and conclusive.

#### *Endorsement of Warehouse Receipts*

- (iv) In order to assign the rights under a Warehouse Receipt to another corporate entity, the corporate entity first named on the Warehouse Receipt shall be required to make the endorsement on the Warehouse Receipt, the company stamp and seal (where applicable), and the date of endorsement. Subsequent assignments should as far as possible be endorsed in the same manner.
- (v) The Company shall only be obliged to accept the surrender of a Warehouse Receipt which has been properly endorsed by the holder thereof who is making the surrender of the Warehouse Receipt to the Company ("last known holder"). Upon acceptance of the surrender, the Company shall release the Goods covered under the Warehouse Receipt to the last known holder, subject to the Company's claim/lien over the Goods for all outstanding charges, and all customs and formalities prescribed by the authorities for delivery being complied with.

#### *Damage to Warehouse Receipts*

- (vi) Any damage or mutilation to the Warehouse Receipt shall render it null and void. The holder of a damaged or mutilated Warehouse Receipt may request in writing for the issue of a new Warehouse Receipt against surrender of the damaged or mutilated Warehouse Receipt and full settlement of all outstanding charges. If reasonable enquiries made by the Company give no reason to doubt the truth of the grounds of the request, the Company may nullify the damaged or mutilated Warehouse Receipt and issue a new Warehouse Receipt as replacement therefor.

#### *Loss of Warehouse Receipt*

- (vii) If a Warehouse Receipt is lost or destroyed, the person entitled to it may request in writing for the issue of a new Warehouse Receipt as replacement for the lost Warehouse Receipt, and the Company may accordingly issue a new Warehouse Receipt upon satisfaction of the following:
- (a) the written request must contain full details for the cause of the loss (including where applicable, enclosing a copy of the police report in relation to such loss), and the grounds on which the applicant proves his title over the said Goods. The Company may demand an advance of money as security in connection with the application;

- (b) the Company has put an announcement in 2 daily newspapers or publication and in any language as selected by the Company in Shanghai and in the place where the Goods are stored to invite persons who believe they have title to the said Goods to oppose the said application, and the Company has not received any opposition to the said application within 14 days (or such long period as may be required under local mandatory laws) from the date of publication of the announcement;
  - (c) full settlement of all outstanding charges (as described in Paragraph (xiv) below) ; and
  - (d) the Company has no reason to doubt the truth of the grounds of the application.
- (viii) The applicant or the beneficiary of the new Warehouse Receipt or the Goods covered thereunder shall:
- (a) be liable to the Company for all costs and expenses incurred by the Company in connection with the nullification of any damaged or lost Warehouse Receipt and issue of a new one in place thereof; and
  - (b) indemnify and hold harmless the Company from any claim, cost, expense and loss suffered or incurred by the Company on account of such delivery. The Company may further require security to be given in this respect.

#### *Duration of Warehouse Receipt*

- (ix) All Warehouse Receipts issued by the Company in accordance with these Conditions shall be valid for a maximum period of 3 years from the date of issue ("WR Duration").
- (x) If the Company no longer wishes to keep the Goods covered under any expired Warehouse Receipt, it shall notify the last known holder to remove the Goods within 30 days from the date thereof.
- (xi) If the last known holder of the Warehouse Receipt fails to respond to the said notice, the Company shall proceed to announce its intention to sell the Goods in any daily newspapers in Shanghai and in the place where the Goods are stored.
- (xii) If the Company does not receive any response within 14 days from the date of such publication or if the last known holder has come forward and no agreement has been reached on the removal of the Goods, the Company may proceed to sell or dispose of the Goods, whether by private contract or otherwise, and deduct from the proceeds of the sale all outstanding charges and costs incurred in handling the sale. If there is any balance from the sales proceeds after deduction of the outstanding charges and costs incurred in handling the sale ("Balance"), the Company is only required to use reasonable efforts to deliver to, or hold the same on account of, the last known holder of the expired Warehouse Receipt any such Balance (without payment of interest).
- (xiii) After the expiry of 3 years from the WR Duration, the Company shall no longer be accountable for the Goods, if not yet sold in accordance with Paragraph (xii) above, or the Balance, if any, to the last known holder of the expired Warehouse Receipt or any other person.

#### *Deductible Outstanding Charges*

- (xiv) The Company shall be entitled to demand or set off the following charges prior to issue/replacement of a Warehouse Receipt or delivery of the Goods covered under any Warehouse Receipt, as the case maybe:
  - (a) unpaid costs for storage and delivery of the Goods covered under the Warehouse Receipt to be calculated at the Company's prevailing rate at the material time (parts of months shall count as full months);

- (b) insurance premiums for so many months as the Warehouse Receipt shows to have elapsed and which has not been recorded therein as already having been paid prior to delivery;
- (c) unpaid costs and expenses incurred by the Company after the date of issue in connection with measures to preserve the Goods covered under the Warehouse Receipt or to eliminate any dangers caused by such Goods to any person or property or which are necessitated by circumstances beyond the Company's control; and
- (d) penalty, levy, claim, damages, costs and expenses incurred in connection with the Goods covered under the Warehouse Receipt.