

# SUN CYPRESS SHIPPING COMPANY LIMITED

## STANDARD TERMS OF BUSINESS

### 1. Definitions

**“Break-bulk Cargo”** means any cargo or goods not stowed in a Container

**“Company”** means Sun Cypress Shipping Company Limited

**“Customer”** means the party with whom the company is transacting

**“Goods”** means the cargo accepted from the Merchant and includes any container into which the cargo is stuffed

**“Merchant”** means the holder, consignee and indorsee of the relevant bill (s) of lading and / or shipper, receiver or other person entitled to possession of the Goods or relevant bill (s) of lading and / or owner of the Goods.

### 2. General

(a) All and any business undertaken, except all and any advice, information or services provided gratuitously by the Company is transacted subject to the terms hereinafter set out and each of the terms shall be deemed to be incorporated in and to be a condition of any agreement between the Company and the Customer. A copy of these standard terms of the Company are obtainable on request. All other terms and conditions are hereby excluded. Should the Customers wish to contract with the Company otherwise than subject to these terms special arrangements can be made and revised prices quoted, provided that such arrangements shall only apply if reduced to writing and signed by an authorized officer of the Customer and by an authorized officer of the Company. Save as aforesaid no agent or employee of the Company has the Company's authority to waive or vary these terms. All and any advice information or services provided by the Company gratuitously is provided on the basis that the

Company will not accept any liability whatsoever therefore in tort or bailment or otherwise.

(b) If any legislation is compulsorily applicable to any business undertaken by or on behalf of the Company, these conditions shall as regards such business be read as subject to such legislation and nothing in these terms 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.

### 3. Contractual Status of the Customer

The Customer entering into any transaction with the Company hereby expressly warrants that it is either the Merchant or the authorized agent of the Merchant (including any containers or equipment) to which the business relates and further warrants that it is authorized to accept and is accepting these Conditions not only for itself but also as agent for the Merchant. Where the Customer accepts these Conditions as agent for the Merchant, it also accepts personal liability but such acceptance shall not prejudice the rights of the company against the Merchant. The Customer shall indemnify the Company against all expenses, losses and other liabilities whatsoever suffered by the Company arising from or due to a breach or breaches of the above warranties whether or not arising out of the negligence of the Customer.

### 4. Company's authority

#### (a) Method of Performance

Subject to express instructions in writing given by the Customer, the Company reserves to itself absolute discretion as to the means, route and procedure to be followed in the handling, storage trans-shipment and transportation of Goods. Further, if in the opinion of the Company it is at any stage necessary or desirable in the Customer's interests to depart from those instructions, the Company shall be at liberty to do so.

(b) Sub-contracting

- (i) Any instructions given to the Company may, in the sole and absolute discretion of the Company, be carried out or complied with by the Company itself, by its own servants performing part or all of the relevant services, or by the Company employing or instructing or entrusting the Goods to sub-contractors on such conditions as the latter may stipulate to perform part or all of the services.
- (ii) The Customer expressly authorizes the Company to do such acts and enter into such contracts on behalf of the Customer so as to bind the Customer by such acts in all respects, notwithstanding any departure from the Customer's instructions as aforesaid. The Customer agrees that the Company is not obliged to consult the Customer before the Company enters into any such contracts or does any such acts. The Customer further agrees that the Company is not obliged to advise the Customer of the terms and conditions of such contracts or details of such acts unless specifically requested to do so by the Customer in writing, provided that the Customer shall have no right to enquire into the actual charges paid by the Company to any third party, and the Customer acknowledges that any difference between the charges paid by the Customer to the Company and the charges paid by the Company to any third party is the Company's commission or remuneration or profit.
- (iii) If the company enters into a contract on behalf of the Customer in its own name with any other person for the carriage (overseas or local), storage, packing, or otherwise handling of the Goods, in addition and without prejudice to the exceptions and limitations contained in these Conditions, the Company shall be entitled to the benefit of all exceptions and limitations in favour of the carriers or other persons storing, packing or otherwise handling the goods, expressly or impliedly contained in the Company's contract or agreement with such carriers or other persons. The Customer will not seek to impose on such carriers or other persons any liability greater than that accepted by them under such contracts.

(c) Where the Company contracts as Principal

The Company in its absolute discretion may, under certain circumstances notwithstanding the terms and conditions as contained herein, issue a combined transport bill of lading or any other bill of lading naming the Company as a principal. Where such a document is issued, the terms and conditions embodied in it shall be paramount in governing the relationship between the Customer and the Company but only in so far as those terms and conditions are inconsistent with or repugnant to these conditions.

5. Storage

Pending forwarding or delivery, Goods may be warehoused or otherwise held at any place or places at the sole and absolute discretion of the Company and at the sole risk of Customer and the cost thereof shall be for the account of the Customer.

6. Packing

Except where the Company is instructed in writing to pack the Goods the Customer warrants and undertakes that all Goods have been properly and sufficiently packed and/or prepared and the Company shall not be liable under any circumstance whatsoever for loss or damage due to insufficiency of packing whether for Break Bulk Cargo or Goods stuffed into containers. The company shall not be responsible for any damage to goods due to improper stowage of any container packed by or on behalf of the Merchant or Customer. The Customer undertakes in such case to ensure the cargo is stowed in a safe manner capable of withstanding ordinary shocks and vibration during normal land/sea transit.

7. Brokerages

The company is entitled to retain and be paid all brokerages, commissions, allowances and other remuneration customarily retained by or paid to shipping and forwarding agents (or freight forwarders) and insurance brokers.

## 8. Quotations and Charges

Quotations are given on the basis of immediate acceptance and subject to the right of withdrawal or revision. If any changes occur in the rates of freight, insurance premiums or other charges applicable to the Goods, quotations and charges shall be subject to revision accordingly without notice.

## 9. Description of Goods

The Customer shall be deemed to be bound by and to warrant the accuracy of all descriptions, values and other particulars furnished to the Company for customs, consular and other purposes, and the Customer undertakes to indemnify the Company against all losses, damages, costs, charges, expenses and fines arising from any inaccuracy or omission, even if such inaccuracy or omission is not due to any negligence.

## 10. Taxes

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

## 11. Collection of Charges

The Customer shall pay to the Company in cash or as agreed all sums immediately when due without deduction or deferment on account of any claims, counterclaims or set-off. On all amounts overdue from the Customer, the Company shall be entitled to interest calculated at 2% per month. When Goods are accepted or dealt with upon instructions to collect freight, duties, costs, charges or other expenses from the Merchant or other person the Customer shall remain responsible for the same if they are not paid by such Merchant or other person. Such instructions to collect payment on delivery in cash (C.O.D.) or otherwise are accepted by the Company upon the condition that the Company in the matter of such collection shall be liable only to the extent that it has failed to exercise reasonable diligence and care.

## 12. Insurance

- (a) No insurance on or in respect of any Goods shall be effected except upon express instructions given in writing by the Customer, provided that the Company has signified in writing its willingness to accept such instructions and to effect such insurance.
- (b) All insurances effected by the Company are subject to the usual exceptions and conditions of the policies of the insurance company or underwriters taking the risk
- (c) The Company shall not be under any obligation to effect a separate insurance on each consignment but may declare it on any open or general policy.
- (d) Should the insurers dispute their liability for any reason the insured shall have recourse against the insurers only, and the Company shall not be under any responsibility or liability in relation thereto, notwithstanding that the premium upon the policy may be at the same rate as that charged by the Company or paid to the Company by its Customer.

## 13. Defences

- (a) The Company shall only be responsible for the Goods whilst they are in its actual custody and under its actual control, and the Company shall not be liable for loss of or damage to Goods or failure to deliver the Goods unless it is conclusively proved that such loss or damage or failure to deliver the Goods occurred whilst the Goods were in the actual custody of the Company and under its actual control and that such loss or damage or failure to deliver the Goods was due to the wilful neglect or default of the Company or its own servants. Save as aforesaid, the Customer shall indemnify and hold harmless the Company its servants and agents from all and every claim for loss or damage to Goods or failure to deliver the Goods brought by the Merchants or other person and in the event of any proceedings being commenced against the Company, its servants or agents in connection therewith to provide the Company with sufficient funds from time to time to defend such proceedings.

- (b) The Company shall only be liable for any delay, neglect, default or failure to carry out or comply with any instructions at any time or from time to time given to it if it is conclusively proved that the same was caused by the wilful neglect or default of the Company, its own servants or agents.
- (c) Save as aforesaid, the Company shall be under no liability or obligation in connection with the Goods or any instructions at any time or from time to time given to it.
- (d) Further and without prejudice to the generality of the preceding sub-condition, the Company shall not in any event be under any liability or obligation for any delay or consequential loss, or loss of market, or loss of profit, however caused, nor for any loss, damage or expense arising from or in any way connected with the marks, weights, numbers, brands, contents, quality or description of any Goods, however caused.
- (e) 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 this indemnity shall cover all claims, costs and demands arising from or in connection with the negligence of the Company, its servants and agents.

#### 14. Limit of Liability

Subject to the terms herein, in the event that the Company is liable to compensate the Customer or Merchant, unless the Hague or Hague Visby Rules are compulsory applicable in which case the relevant limitation amounts set out therein shall apply, the compensation shall not exceed in any circumstances whatsoever the following:

- (a) In the case of physical loss or damage to the goods or any other claims in respect of the goods, not exceeding the least of
  - (i) the value of the goods lost; or

- (ii) the reasonable costs of repair in the case of damage; or
- (iii) US\$2 per kilogram of the goods lost or damage or in respect of which a claim is made; or
- (iv) US\$500 per package of the goods lost or damage or in respect of which a claim is made.

(b) In the case of misdirection of the goods, not exceeding the least of

- (i) the additional cost of transporting the goods to the correct destination by the original mode of transport under contract; or
- (ii) the value of the goods misdirected; or
- (iii) US\$2 per kilogram of the goods misdirected; or
- (iv) US\$500 per package of the goods misdirected.

(c) In the case of physical loss or damage to containers owned or leased by the Customer, the lesser of

- (i) the value of the container; or
- (ii) in the case of physical damage the reasonable cost of repair

Provided that:

- (i) in no event shall the liability of the Company under sub-paragraph (a) exceed US\$200,000, or in the case of sub-paragraphs (b) and (c) US\$50,000 per event or events arising from the same cause; and
- (ii) in any other case whatsoever falling outside the circumstances listed in sub-paragraphs (a), (b) and (c) above, the liability of the Company shall not exceed US\$200,000 per event or events arising from the same cause.

## 15. Extension of Terms

Each and every servant, agent or sub-contractor of the Company shall have the benefit of these terms. In addition, the Customer shall ensure that the Company, its servants, agents or sub-contractors shall also have the benefit of all terms, conditions, liberties and exceptions contained in the Customer's bill of lading. In entering into any contract pursuant to these terms, the Company does so not only on its own behalf but as agent and trustee for such servants, agents or sub-contractors.

## 16. Notice of Claim

In any event, the Company shall be discharged from all liability whatsoever for any claims including loss from Break-Bulk Cargo or a container from damage, deviation or misdelivery (however caused), unless:

- (a) (i) notice of any claim is received in writing by the Company or its agent within 14 days after the date specified in (b) below
- (ii) suit is brought in the proper forum and written notice thereof received by the Company within 9 months after the date specified in (b) below
- (b) (i) in the case of damage to Goods, the date of delivery of the Goods, and in the case of loss of the Goods, the date the Goods should have been delivered.
- (ii) in the case of delay or nondelivery or misdelivery of the Goods, the date that the Goods should have been delivered.
- (iii) in any other case, the event giving rise to the claim.

## 17. Declaration

- (a) The Company shall not be obliged to make any declaration for the purpose of any legislation, ordinance, regulation or contract as to the nature or value of any Goods or as to any special interest in delivery, unless required by law or expressly instructed by the Customer in

writing.

- (b) Where there is a choice of rates according to the extent, or degree of the liability or the obligations assumed by carriers, warehousemen or others, Goods will be forwarded and/or dealt with at the Customer's risk or other minimum charges, no declaration of value (where optional) will be made, unless express instructions in writing to the contrary have previously been given by the Customer.

18. Perishable Goods

Perishable goods which are not taken up immediately upon arrival, or which are insufficiently addressed or marked or otherwise not readily identifiable, may be sold or otherwise disposed of without any notice to the Customer or Merchant and payment or tender of the net proceeds of any sale after deduction of charges shall be equivalent to delivery. All costs, charges and expenses arising in connection with the sale or disposal of the Goods shall be paid by the Customer.

19. Failing to Collect

The company shall be entitled to sell or dispose of all non-perishable goods which, in the opinion of the Company, cannot be delivered either because they are insufficiently or incorrectly addressed, or because they are not collected or accepted by the Merchant, or for any other reason, upon giving twenty-one (21) days' notice in writing to the Customer. All costs, charges and expenses arising in connection with the storage and sale or disposal of the Goods shall be paid by the Customer.

20. Warranties or Fitness of Goods etc

- (a) Except under special arrangements previously made in writing the Customer warrants that the Goods are fit for carriage (overseas or local), storage, packing or otherwise handling pursuant related or incidental to the Customer's instruction, and are not goods (or consist of goods) included in the Dangerous Goods (Classification) Regulations of the Laws of Hong Kong Cap. 295 or any modification hereof prevailing at the time the Company confirms acceptance of the Customer's instructions, nor are goods (or consist of goods) of

comparable hazard, nor are goods (or consist of goods) otherwise likely to cause damage. Should the Customer nevertheless deliver any such Goods to the Company or cause the Company to accept or handle or deal with any such Goods otherwise than under special arrangements previously made in writing, then whether or not the Company is aware of the nature of such Goods the Customers shall be liable for all expenses losses or damages whatsoever caused by or to or in connection with the Goods howsoever arising, and shall indemnify the Company against all penalties claims damages costs expenses and any other liabilities whatsoever arising in connection therewith, and the Goods may be destroyed or otherwise dealt with at the risk and expenses of and without any liability to the Customer or the Merchant in the sole discretion of the Company or any other person in whose custody or control they may be at the relevant time.

(b) The Company or such other person shall have the right to decide whether or when the Goods are or become (or consist of Goods which are or may become) unfit for carriage (overseas or local), storage, packing, handling etc or are or become goods (or consists of goods which are or become goods) of comparable hazard to the goods included in the Dangerous Goods (classification) Regulations or any modification thereof, or are or become goods (or consist of goods which are or become goods) which are otherwise likely to cause damage. If such Goods are accepted under arrangements previously made in writing, they may nevertheless be destroyed, or otherwise dealt with at the risk and expense of and without any liability to the Customer or the Merchant in the sole discretion of the Company or any other person in whose custody or control they may be at the relevant time on account of risk to other goods, property, life or health. The expression "goods likely to cause damage" includes but is not limited to goods likely to harbour or encourage vermin or other pests.

(c) The Customer, Merchants and their agents and servants are all jointly liable for any breach of the items contained herein.

## 21. Cargo Exceptions

Except under special arrangements previously made in writing, the Company will not accept or deal with bullion, coins, precious stones,

jewellery, valuables, antiques, pictures, livestock or plants. Should any Customer nevertheless deliver any such Goods to the Company or cause the Company to handle or deal with any such Goods otherwise than under special arrangements previously made in writing, the Company shall be under no liability whatsoever for or in connection with the Goods however caused.

## 22. Responsibility for Charges

The Company shall have the right to enforce any liability of the Customer under these conditions or to recover any sums to be paid by the Customer under these conditions not only against or from the Customer but also against the Merchant.

## 23. Lien

All Goods (and documents relating to Goods) shall be subject to a particular and general lien and right of detention for moneys due either in respect of such Goods or for any particular or general balance or other moneys due from the Customer or the Merchant to the Company. If any moneys due to the Company are not paid within one calendar month after notice has been given to the person from whom the moneys are due that such Goods are being detained, they may be sold by auction or otherwise at the sole and absolute discretion of the Company and at the expense of such person, and the proceeds applied in or towards satisfaction of such indebtedness.

## 24. Indemnity

In addition to and without prejudice to the foregoing Conditions, the Customer undertakes that it shall in any event indemnify the Company against all liabilities or obligations sustained, suffered or incurred by the Company arising directly or indirectly from or in connection with the Customer's instructions or their implementation or the Goods, and in particular the Customer shall indemnify the Company in respect of any liability it may be under to any servant, agent or sub-contractor, or any ocean carrier, lighterman, stevedore, haulier, carrier, warehouseman, or other person whatsoever at any time involved with the Goods arising out of any claim made directly or indirectly against any such party by the

Customer or by the Merchant or by any person interested in the Goods, or by any other person whatsoever.

25. Warehousing

- (a) If and whenever the Company stores any Goods on the Customer's instructions otherwise than pending forwarding or delivery, it will hold such Goods as warehousemen subject to its usual charges for warehousing and to the condition that it is not liable for any loss of or damage to the Goods, or any part thereof, except upon proof that such loss or damage arose from the wilful misconduct of the Company or its servants or agents. Dangerous Goods so stored by the Company shall be subject to Condition 19. The Company's liability for any loss or damage to Goods so stored shall be subject to the limit specified in Condition 14.
- (b) Goods so stored by the Company shall be at the Customer's sole risk and it shall be the Customer's responsibility to insure the Goods. The Company shall be under no obligation to insure the Goods. Should any insurer dispute liability for any reason the insured shall have recourse only against such insurer, and the Company shall not be under any liability.
- (c) Should the Company unexpectedly and through no fault of its own have to evacuate the warehouse premises in which the Goods are stored, the Customer shall at his own expense have the Goods removed or, if the Goods are moved to other storage premises, pay the costs of removal and any increase of the rent due to the removal.
- (d) In the absence of other arrangement, the Company may at any time terminate any storage agreement with the Customer by seven (7) days' notice.

26. Illegality

If at any time any one or more provisions of these Standard Terms of Business is or shall be invalid, illegal or unenforceable in any respect or to any extent under any law, the validity, legality or enforceability of the remaining provisions of these conditions shall not in any way be affected or impaired thereby.

27. Notation and Tallying

(a) The Company shall not be responsible for failing to inform the Customer or Merchant of any loss or damage to Break Bulk Cargo, any container or its contents upon receipt or handling by the Company.

(b) The Company shall not be liable for any errors in the tallying of any Break Bulk Cargo or container.

28. Company's Responsibility

The Company shall not be liable nor responsible to the Customer or Merchant in any case whatsoever for loss or damage to any Break Bulk Cargo or container or Goods due to or resulting from the wrongful act or neglect of the Customer or Merchant, fire, explosion, theft or pilferage (unless by the Company's servants), riots, civil commotion, strikes, lockouts, withdrawal of labour or restraint of labour, inherent vice in the Goods, wastage in bulk or weight of the Goods, inadequate or insufficient packing, inadequacy or insufficiency of marks or number on the Goods or containers, storm, typhoon, flooding, lightning or Act of God or any other cause or events which the Company could not foresee or avoid with reasonable diligence.

29. Tort and Contract

The Standard Terms of Business and all limitations, exceptions and exclusions shall ensure for the benefit of not only the Company but its employees, servants, agents and shall also apply to all such claims

whether brought in tort or contract.

30. Law and Jurisdiction

These Standard Terms of Business and all contracts made between the Company and its Customers shall be governed by and construed in all respects in accordance with the laws of Hong Kong and any claim against the Company shall be brought before the Supreme Court of Hong Kong which shall have exclusive jurisdiction over any such claims and to which jurisdiction each Customer and Merchant agrees to submit.

31. Notice of Customer's Correspondence Details

The Customer shall keep the Company informed from time to time of his address and of any change thereof. Any notice or communication required to be given or sent by the Company shall be deemed properly given or sent if delivered or sent by post addressed to the Customer at the last address notified to the Company.

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