

SUN CYPRESS SHIPPING COMPANY LIMITED

TERMS AND CONDITIONS OF BILL OF LADING

1. In this Bill of Lading, the following words have the following meanings:

"Carrier" means SUN CYPRESS SHIPPING COMPANY LIMITED.

"COGSA" means the Carriage of Goods by Sea Act of the United States of America approved on 16 April 1936.

"Merchant" means and includes the shipper, the consignee, the holder of this Bill of Lading and the owner of the goods.

"goods" includes goods, wares, merchandise and articles of every kind whatever; and any container, trailer, tank or pallet (including similar articles of transport used to store or consolidate goods) not supplied by or on behalf of the Carrier.

"Dangerous Goods" includes goods which are of dangerous, explosive, inflammable, radioactive or damaging nature.

"Hague Rules" means the International Convention for the Unification of certain Rules of Law relating to Bills of Lading signed at Brussels on 25 August 1924.

"Hague-Visby Rules" means the Hague Rules as amended by the Protocol signed at Brussels on 23 February 1968.

"Services" means the services provided by the Carrier including undertaking carriage of goods by sea, inland waterway, road, rail and/or air.

2.1. If at any time one or more of the terms of this Bill of Lading becomes invalid or illegal, the validity or legality of the remaining terms of this Bill of Lading shall not in any way be affected.

2.2. The Carrier shall be entitled to all the rights, immunities, exceptions and limitations conferred on the carrier or the owner of the vessel by any applicable law or legislation.

2.3. Carriage of goods by sea or inland waterway covers the period from the time when the goods are loaded on to the time they are discharged from the vessel. As far as carriage of goods by sea or inland waterway is concerned, the Carrier's liability shall be determined by the Hague Rules or any legislation making such Rules or the Hague-Visby Rules compulsorily applicable (such as COGSA) to this Bill of Lading. Without prejudice to Clause 3.2 and solely for the purpose of applying the Hague Rules, this Bill of Lading shall be deemed as a document of title as required by Article I(b) of the Hague Rules. The Hague or the Hague-Visby Rules shall prevail in so far as they are inconsistent with any other terms of this Bill of Lading. The limitation amount in Article IV (5) of the Hague Rules is deemed to be the nominal value of 100 pounds sterling. Article IX of the Hague Rules is deemed to be deleted. The limitation amount according to COGSA is US\$500 per package or customary freight unit, unless the nature and value of the goods have been declared by the shipper before shipment and inserted in this Bill of Lading.

2.4. Regarding the responsibility and liability of the Carrier for loss or damage to, or in connection with, the custody and care and handling of the goods prior to the loading on, and subsequent to the discharge from the vessel, such shall be determined by the terms of this Bill of Lading.

2.5. The Services are subject to the terms of this Bill of Lading.

3.1. This Bill of Lading, if consigned to order, is negotiable and constitutes title to the goods. The holder, by endorsement of this Bill of Lading, is entitled to receive or transfer the goods.

3.2. This Bill of Lading, if consigned to a named consignee, is not negotiable. The Carrier is entitled to deliver the goods to the named consignee without production of any original of this Bill of Lading.

3.3. This Bill of Lading is prima facie evidence of receipt of the goods by the Carrier. However, proof to the contrary is not admissible when this Bill of Lading has been transferred to a third party acting in good faith.

4.1. The Merchant entering into any business with the Carrier warrants to the Carrier that the Merchant is either the owner of the goods or the authorized agent of the owner of the goods and that it is authorized to accept the terms of this Bill of Lading not only for itself but also for the owner of the goods.

4.2. The Merchant further warrants that:

- a. all the goods have been properly and sufficiently packed and that the Carrier has no liability for any loss of, damage to or any other claims relating to the goods which are improperly or insufficiently packed; and
- b. the goods are fit and suitable for the carriage, storage and any other handling in accordance with the Merchant's instructions; and
- c. it shall fully comply with applicable laws and regulations of ports, Customs or other authorities.

5.1. The Merchant shall indemnify the Carrier against all claims, liability, losses, damages, costs and expenses arising out of the Carrier acting in accordance with the Merchant's instructions, or arising from a breach of warranty or obligation on the part of the Merchant, or arising from the inaccurate information or the insufficient instructions provided by the Merchant, or arising from the negligence of the Merchant.

5.2. The Merchant undertakes that no claim shall be made against any servant, agent or sub-contractor of the Carrier if such claim imposes upon them any liability in connection with any Services provided by the Carrier. If any such claim should nevertheless be made, the Merchant shall indemnify the Carrier against all consequences. Every such servant, agent and sub-contractor shall have the benefit of all the terms herein benefiting the Carrier as if such terms were expressly provided for his or its benefit. For these purposes, the Carrier contracts for itself and also as agent and trustee for each such servant, agent and sub-contractor.

5.3. The Merchant shall defend, indemnify and hold harmless the Carrier from and against all claims, costs and demands whatsoever and by whomsoever made or preferred in excess of the liability of the Carrier under the terms of this Bill of Lading, and such indemnity shall include all claims, costs and demands arising from the negligence of the Carrier, its servants, agents or

sub-contractors.

5.4. The Merchant shall defend, indemnify and hold harmless the Carrier in respect of any General Average claim that may be made against the Carrier and the Merchant shall provide such security as may be required by the Carrier. General Average shall be adjusted according to the York-Antwerp Rules 1974 or any amendment thereto or the York-Antwerp Rules 1994 or any modification thereof at the option of the Carrier.

5.5. If the vessel carrying the goods (the carrying vessel) collides with any other vessel (the non-carrying vessel) as a result of the negligence of both the vessels, the Merchant undertakes to defend, indemnify and hold harmless the Carrier against any liability to any other party in so far as such liability relates to any claim whatsoever made against the non-carrying vessel by the Merchant.

5.6. In the event of accident, danger, damage or disaster before or after the commencement of the voyage, resulting from any cause whatsoever, whether due to negligence or not, for which or for the consequence of which, the Carrier is not responsible, by Statute, contract or otherwise, the cargo, Shipper, Consignee or owners of the cargo shall contribute with the Carrier in General Average to the payment of any sacrifices, losses or expenses of a General Average nature that may be made or incurred and shall pay salvage and special charges incurred in respect of the cargo. If a salving vessel is owned or operated by the Carrier, salvage shall be paid for as fully as if the said salving vessel or vessels belonged to strangers. Such deposit as the Carrier, or its agent, may deem sufficient to cover the estimated contribution of the cargo and any salvage and special charges thereon shall, if required, be made by the cargo, Shipper, Consignee or owners of the cargo to the Carrier before delivery.

6. Except under special arrangements previously made in writing, the Merchant warrants that the goods are not Dangerous Goods, nor are goods of comparable hazard, nor are goods otherwise likely to cause damage. Should the Merchant nevertheless deliver any such goods to the Carrier or cause the Carrier to handle any such goods otherwise than under special arrangements previously made in writing, then whether or not the Carrier is aware of the nature of such goods, the Merchant shall be liable for all expenses, losses or damage whatsoever caused by or to or in connection with such goods and howsoever arising, and shall indemnify the Carrier against all penalties, claims,

damages, costs, expenses and any other liability whatsoever arising in connection with such goods, and such goods may be destroyed or otherwise dealt with at the risk and expenses of the Merchant in the sole discretion of and without any liability to the Carrier. If such goods are handled by the Carrier under arrangements previously made in writing, they may nevertheless be destroyed at the risk and expenses of the Merchant in the sole discretion of and without any liability to the Carrier on account of risk to other goods, property, life or health. The goods that are likely to cause damage include goods that are likely to encourage vermin or other pests.

7. Except under special arrangements previously made in writing, the Carrier will not deal with bullion, bank notes, coins, cheques, bonds, negotiable documents and securities, precious stones, precious metal objects, jewellery, valuables, antiques, valuable works of art, live animals or plants. Should the Merchant deliver any such goods to the Carrier or cause the Carrier to handle any such goods otherwise than under special arrangements previously made in writing, the Carrier shall be under no liability whatsoever in connection with such goods (including any loss, damage, misdelivery, misdirection or delay howsoever caused) and notwithstanding that the value of any such goods may be shown or declared on any documents accompanying such goods.

8.1. If delivery of the goods is not taken by the Merchant at the time and place when and where delivery should be taken, the Carrier shall be entitled (but is not obliged) to store the goods at the sole risk of the Merchant, whereupon any liability which the Carrier may have in respect of the goods stored shall wholly cease and the cost of such storage shall be paid by the Merchant to the Carrier.

8.2. The Carrier is entitled (but not obliged) to sell or dispose of all goods which in the opinion of the Carrier cannot be delivered either because they are insufficiently or incorrectly addressed or because they are not collected or accepted by the Merchant within 14 days after notice has been given to the Merchant. The Merchant shall pay all charges and expenses in connection with the storage and the sale and/or disposal of the goods.

8.3. All goods and documents relating thereto shall be subject to a particular and general lien for monies due either in respect of such goods, or for any particular or general balance or other monies due from the Merchant to the Carrier. If any such monies due to the Carrier are not paid within 14 days after

notice has been given to the Merchant, the goods may be sold by auction or otherwise at the sole discretion of the Carrier at the expense of the Merchant, and the proceeds (net of the expenses in connection with such sale) shall be applied in satisfaction of such debts, and the Carrier shall not be liable for any reduction in value received on the sale of the goods, nor shall the Merchant be relieved from the liability of any outstanding debts merely because the goods have been sold.

9. Charges for the Services shall be deemed fully earned and non-returnable upon receipt of the goods by the Carrier. The Merchant shall pay to the Carrier all sums immediately when due without deduction on account of any claim, counterclaim or set-off. Payment to the Carrier is due as soon as an invoice is rendered to the Merchant. For any amount unpaid within 30 days from the date of the invoice, the Carrier shall be entitled to interest from the date of the invoice until payment at 2% per month.

10.1. The Carrier shall be entitled to sub-contract on any terms the whole or any part of the Services whatsoever undertaken by the Carrier.

10.2. The Carrier reserves to itself absolute discretion as to the means, the routes and the procedures to be followed in the carriage, the storage and the other handling of the goods. The Carrier has liberty to use any means, routes or procedures, including using any vessel whether or not named on the front page of this Bill of Lading or stowing the goods on or under deck. Anything done in accordance with the aforesaid discretion or liberty shall not be a deviation of whatsoever nature or degree.

11.1. The Carrier does not guarantee any arrival time and shall not be liable for any delay. The Carrier shall not be liable for any damage to, loss, misdirection or misdelivery of goods or any other claims, unless it is proved that such damage, loss, misdirection, misdelivery or any other claims are caused by the negligence of the Carrier, its servants, agents or sub-contractors. In any event, the liability of the Carrier shall not exceed those limits as set out in Clause 11.3.

11.2. Notwithstanding any other terms in this Bill of Lading to the contrary but subject to Clause 2.3, the Carrier shall not in any event be liable whatsoever for:

- a. any indirect, consequential or economic loss (including loss of market, profit, revenue, business or goodwill); or
- b. any loss, damage, expense or claim arising from fire, flood, storm, typhoon, explosion or strike; or
- c. any loss of or damage to the goods (which are stated on the front page of this Bill of Lading to be carried on deck and which are so carried)

howsoever caused and whether or not resulting from any act or omission or default or neglect on the part of the Carrier, its servants, agents or sub-contractors.

11.3. For those liability which cannot be exempted or excluded by any other terms in this Bill of Lading, the liability of the Carrier howsoever arising shall in no event exceed a sum of whichever is the lower of:

- a. US\$500 per package or unit of; or
- b. US\$2 per kilogram of the gross weight of

the goods or any other properties lost, damaged, misdirected, misdelivered or in respect of which a claim is made provided that the Carrier's liability whatsoever shall in no circumstance exceed a total sum of US\$250,000 per event or events arising from a common cause. Without prejudice to the other terms of this Bill of lading, if the Carrier is held liable for delay, liability shall be limited to an amount equivalent to the Services charges applicable to the goods delayed.

11.4. The Carrier may accept liability in excess of the limits set out in Clause 11.3 provided that (i) the value of the goods has been declared in writing by the shipper and accepted by the Carrier before the goods are received by the Carrier and (ii) the Merchant pay to the Carrier additional charges as decided by the Carrier. Details of the additional charges will be provided upon written request by the shipper. The declared value accepted shall be stated on the front page of this Bill of Lading and shall be the Carrier's limit of liability and shall replace the limits in Clause 11.3.

11.5. All and any Services provided by the Carrier gratuitously are provided on the basis that the Carrier will not accept any liability whatsoever.

11.6. It is agreed that superficial rust, oxidation, discoloration, or any like condition due to moisture, is not a condition of damage but is inherent to the nature of the goods and acknowledgement of receipt of the goods in apparent good order and condition is not a representation that such conditions of rust, oxidation, discoloration, or the like did not exist on receipt.

12. If the Services are or are likely to be affected by any risk, delay, hindrance, difficulty or disadvantage of any kind whensoever and howsoever arising, the Carrier may abandon the Services and place the goods at any place for the Merchant to dispose of the goods, whereupon the Carrier's liability and responsibility in respect of the goods shall cease.

13. Any claim against the Carrier must be in writing and delivered to the Carrier within 14 days from the date of delivery of the goods or the date the goods should have been delivered or the date of the event giving rise to the claim, whichever is the earliest. Otherwise, the Carrier shall be discharged of all liability whatsoever in respect of any claim.

14. The Carrier shall be discharged of all liability whatsoever in respect of any claim unless suit is brought against the Carrier in the courts of the Hong Kong Special Administrative Region within nine months from the date of delivery of the goods or the date the goods should have been delivered or the date of the event giving rise to the claim, whichever is the earliest.

15. The defences, exemptions and limitations of liability provided for in this Bill of Lading shall apply in any action against the Carrier whether such action is founded in contract or in tort.

16. The contract evidenced by this Bill of Lading is governed by the laws of the Hong Kong Special Administrative Region. Any proceedings against the Carrier must be brought in the courts of the Hong Kong Special Administrative Region and no other court.

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