

# FEDERATION OF MALAYSIA FREIGHT FORWARDERS

## GENERAL STANDARD TRADING CONDITIONS

**NOTICE:** Customers are advised that any business transactions with any accredited members of the Federation of Malaysia Freight Forwarders and/or its component states associations are governed by the Standard Trading Conditions as contained herein. If not specified in any written contract, these conditions are incorporated by reference.

### GENERAL PROVISIONS

#### 1. Applicability of the Standard Trading Conditions

1.1. The Standard Trading Conditions (STC) contained herein shall be interpreted and construed in accordance with and governed by the laws of Malaysia and any legislations and/or conventions, adopted or ratified and incorporated into the laws of Malaysia, including its subsequent amendments or enactments, if any.

1.2. All transactions entered into between any accredited members of the Federation of Malaysia Freight Forwarders and/or its component states associations (collectively called FMFF) with the customers are subject to the application of the STC and such other rules and regulations implemented by prevailing applicable legislations and/or conventions and/or their subsequent amendments or enactments, if any.

1.3. The customers, by notice contained in any transactional advices, agree and acknowledged that the STC are deemed to be incorporated into the contract of carriage and shall supersede any other terms of the contract which are in conflict with these conditions except that which are incorporated by legislations and/or conventions and/or their subsequent amendments or enactments, if any.

1.4. Unless otherwise contained to the contrary, the member performs the role of an agent of principals, which shall be deemed to include the carriers and such other performing parties operating and contracting as carriers or representatives and agents of carriers.

#### 2. Definitions

2.1. "Arbitration" shall mean the conduct of resolution of commercial disputes presented before an arbitral tribunal constituted in accordance with the provisions of the Arbitration Act (2005) and/or any applicable legislations and/or conventions ratified and admitted into the laws of Malaysia including its applicable subsequent amendments or enactments, if any.

2.2. "Association" whether used in the singular or plural form shall mean the FMFF and/or any of its component states associations which are societies duly registered under the Societies Act (1966) and having their own Rules and Regulations or Memorandum and Articles of Associations, among others, implementing its own code of conduct or code of ethics regulating its members.

2.3. "Authority" shall mean a duly constituted legal or administrative office or the person exercising the vested powers of such an office in any jurisdiction and that includes but not limited to the state or municipal office, port authorities and the customs board established under the Port Authorities Act (1963).

2.4. "Bill of Lading" or "Waybill" shall mean the evidence of the contract of carriage, including that which is electronically documented or not available in the printed form, and shall bear the same meaning as provided for in the Carriage of Goods by Sea Act (1950) and/or its subsequent amendments.

2.5. "Carriers" whether used in the singular or plural form shall refer to the company which owns and operates commercial scheduled liners, vessels and/or land transportation vehicles and carrying equipments, licensed to conduct the business of carriage of goods and conveyance services. The term shall be deemed to include the agents or representatives contracting as carriers where the agents or representatives issued such documents denoting a contract of carriage as a carrier.

2.6. "Company" is used when the member conducts its business as a freight forwarder or an agent providing such services for the conveyance of goods and services and that shall include, among others, the carriage of goods (whether wholly or partially) by sea, consolidation of the goods for carriage, storage, handling, packing or distribution of the goods for delivery or carriage as well as any ancillary and advisory services in connection therewith, including but not limited to port and customs clearance and related ancillary matters, procuring insurance on the goods, collecting or procuring payment or documents relating to the goods.

2.7. "Consignee" whether used in the singular or plural form is the party entitled to take delivery of the goods, whether through an agent acting on their behalf or by any person who is directly and legally vested with interest in the goods, and where applicable shall bear the same meaning as the buyers or the intermediary party accepting the goods whether for onward transit or final taking of delivery at the destination port.

2.8. "Customer" shall mean the same as the shipper or owner of the goods and/or any party acting on behalf of the owner or any persons legally interested in the goods and has the authority to provide instructions or be entitled to the rights or obligations under the contract of carriage concluded with the company.

2.9. "Dangerous Goods" shall bear the same meaning as that contained in the International Maritime Dangerous Goods Code (2012) or any applicable legislations and/or conventions governing "Dangerous Goods" and among others, shall include certain graded and controlled liquids or chemicals and materials, flammable goods, and any other materials or goods, including its shipping units, which will become a danger to lives and property.

2.10. "Documentary shipper" refers to the party named as "Shipper" in any documentary title, whether the document is in the printed form or electronically and digitally documented, and may mean the same as the shipper or actual owner of the goods, or the agent acting on behalf of the shipper, who contracts with the company to move the goods.

2.11. "Equipments" refers to the transportation or shipping unit used to consolidate, contain or pack the goods for transit under the carriage contract and that includes the containers and its chassis, where applicable, pallets, transportable tanks and other similar articles customarily used for the transportation of goods.

2.12. "Electronic Data Interchange" or "EDI" refers to the computerized data interchange where such documentary titles or transactions pertaining to the carriage of goods are stored, retrieved or transmitted. Provided that the EDI complies with internationally accepted secured e-commerce protocol operated and controlled by the Authorities or on its behalf, the EDI electronic documents, including the Bill of Lading or Waybill and/or such other correspondences or electronic mails may be accepted as evidence of transactions for the carriage of goods when retrieved into print or transmitted between terminals.

2.13. "Freight" means the remuneration payable to the carrier and/or the company acting as agent on behalf of the carrier, for the services rendered in the carriage of goods and, if not specified, may include charges for such other ancillary services provided by the member.

2.14. "General Average" has the same meaning as that contained in the York-Antwerp Rules (2004).

2.15. "Goods" shall mean anything that has commercial value stipulated in the contract of carriage and is movable and tangible and that includes the transportation or shipping units customarily used to transport the goods.

2.16. "Legislations" and "Conventions" shall include the laws of Malaysia and where applicable, the international multimodal conventions including, the Hague-Visby Rules (1968); Hamburg Rules (1978); the Rotterdam Rules (2009) and the CMR Convention (1956) and where applicable for carriage of goods by air, the Warsaw Convention (1929) as amended by the Montreal Protocol (1995).

2.17. "Multimodal Transport" refers to the movement of goods by a combination of conveyances, other than wholly or partially by sea, and where the contract of

carriage is based on such a term, shall mean "door-to-door" shipments where the contracting carrier undertakes delivery of the goods until the final destination, which is other than a Port, as contained in the Bill of Lading or Waybill.

2.18. "Port-to-Port" means the company contracts to carry the goods from the Port of Origin or Port of Loading, including any transhipment ports, to the Port of Destination or Port of Discharge.

2.19. "Shipper" has the same meaning as the owners of the goods or any persons acting on behalf of the owners, including the agents or representatives, vested with legal interest in the contract of carriage of the goods to a destination.

2.20. "Valuables" means any negotiable instruments and includes bullion, coins, money, precious stones, jewellery, antiques, pictures, work of art and any similar goods of certain value or carried at "Agreed Value" specified in the Bill of Lading or Waybill.

#### 3. Cargo Insurance

3.1. The company is not obliged to advise, procure or effect marine cargo insurance cover on the goods unless the customer has given specific instructions for the company to acquire such insurance coverage to indemnify the shipper or consignee or any other persons legally vested with interest for the safe delivery or receipt of the goods.

3.2. All such insurance cover, if procured on behalf of the customer, are bound at such applicable premium rates, terms and conditions and exclusions contained in the contract of insurance by the insurance company or underwriters notwithstanding that the company collects the premium as part of the handling charges for the carriage of goods. The company does not undertake any professional liability or responsibility to ensure that the coverage so acquired is sufficient or provides comprehensive indemnity for the loss of or damage to the goods.

3.3. Where no insurance cover is procured on the goods, in the event of a General Average being declared and notified by the carrier or the master of the carrying vessel acting on behalf of the carrier, the customer shall procure a banker's guarantee as required security and/or deposit such required cash collateral for the release of the goods held by the appointed Average Adjusters.

#### 4. Failure to take final delivery of the goods upon arrival at destination

4.1. If at any time there is any dispute arising over the control of the goods upon arrival at destination hindering the final delivery or taking delivery of the goods, the customer shall continue to be liable for any subsequent or recurring costs and expenses incurred therefrom the date the incident occurs and shall indemnify the company accordingly for such further costs and expenses.

4.2. Where documentary title to the goods has not yet passed, the customer is still interested as the shipper and shall indemnify the company for all such further costs and expenses incurring, including all demurrages, customs duties and fines and outstanding freight or warehousing charges and any recovery expenses to conduct final delivery of the goods.

4.3. Where the dispute persists and upon the shipper's inability to resolve the same with the consignee or any other buyer 30 calendar days after arrival of the goods or from the date such dispute arose, the company shall be vested with a General Lien on the goods and may either exercise the rights to confiscate and/or to accordingly forfeit and dispose the goods in any manner deemed fit and proper so as to make good and/or recover any further costs and expenses incurred.

4.4. All negotiations and correspondences taking place between the company and their appointed destination agent or representative to attempt delivery or taking delivery of the goods and/or to resolve any disputes arising between the shipper and consignee and other legally interested parties are conducted as agent for and on behalf of the customer and/or the actual owners of the goods.

4.5. In the event a General Lien is notified to the customer and/or the shipper and/or any legally interested parties, the company shall conduct sale and disposal of the goods by auction, whether by private arrangement or by public notification, the net proceeds shall accordingly be used to defray the cost of auction, the costs and expenses owing to the company and the customer and/or actual owners of the goods if there remains any amount thereafter.

4.6. Notwithstanding the above, the company shall be entitled to full indemnity from the customer in respect of any amount owing or any outstanding costs and expenses in the final delivery of the goods.

#### 5. General delivery obligations

5.1. The company shall carry out his services according to the customer's instructions and as agreed it being understood that the instructions shall be complete and clearly communicated. Otherwise, the member may at the risk and expense of the customer act accordingly to supplement such incomplete instructions and advice so as to complete the contract of carriage.

5.2. The company shall contract for and on behalf of the customer to engage the services of other providers, including but not limited to carrier, clearing agents, land transport operators, warehousing operators, customs brokers and others, for the final delivery of the goods to the consignee or any legally interested parties as instructed by the customer.

5.3. The company may with or without notice to the customer or shipper exercise its own discretion or arrange to carry the goods on or under deck and/or substitute the means, route and procedure to be followed in the handling, stowage, storage and transportation of the goods pending the delivery or taking of delivery of the goods or upon its arrival at destination.

5.4. Where an inability to deliver the goods for any reason whatsoever occurs, the company may at its discretion arrange for the goods to be stored at the most convenient destination pending final instructions from the customer or the owners of the goods and such additional costs and expenses shall be accordingly accrued for the account of the shipper.

#### THE CUSTOMER'S OBLIGATIONS AND LIABILITY

##### 6. Information and Indemnification

6.1. The customer shall be deemed to have truthfully and accurately declared all particulars relating to the general nature and description of the goods, their marks, numbers, weights, volume and quantity and, if applicable, the dangerous character of the goods, as furnished.

6.2. The customer shall be liable for all loss or damage, costs, expenses and any fines or charges imposed by the authority resulting from the inaccurate, fraudulent or incomplete information or instructions provided for the carriage of the goods.

6.3. In the event the company shall become liable to any other party resulting from the inaccurate or fraudulent information, whether the company is negligent or otherwise, the customer shall indemnify and hold harmless the company accordingly for such action taken against the company.

6.4. Where other costs and expenses are payable, including duties or such other additional charges, the company shall be entitled to claim the same on the customer, notwithstanding there being any claim on the company for any loss of or damage to the goods, the monies so paid out by the company on behalf of the customer shall become payable without any reduction or deferment on the account of any claim, counter-claim or set-off against any amount owing to the company.

6.5. Where the customer is in arrears of any payments for freight and services rendered by the company and the outstanding exceeds the agreed credit period,

the company shall be entitled to impose a late payment penalty charge of such percentage as advised and/or imposed by the associations.

6.6. In the event the arrears remained outstanding beyond such further period in excess of the agreed credit period as granted by the company for the customer to make good such outstanding and provided that the customer responded to the demands for payments being served on them, the company shall be entitled to report such delinquent accounts accordingly as required under the Credit Reporting Agencies Act (2010) without any liability or responsibility for any loss or damage ensuing therefrom or thereafter when the customer's delinquent account shall be reflected in the trade bureau database.

### GENERAL LIABILITY AND EXCLUSIONS

#### 7. Limitation of liability

7.1. The company acts as a freight forwarding agent and is only liable for the failure to exercise reasonable care in the performance of the contract of carriage and delivery of ancillary services relating to the delivery or taking delivery of the goods.

7.2. Unless notice of loss or damage is given in writing to the company, the handing over or the taking delivery of by any party entitled to take delivery is prima facie evidence of the delivery of the goods in good order and condition. Where such loss or damage is not apparent at delivery, the same prima facie effect shall apply if notice in writing is not given within six calendar days after the date the goods have been handed over or from the date of taking delivery of the goods.

7.3. The company is not liable for acts of error and omission by any third parties involved with the carriage of the goods, such as, but not limited to, carriers, warehousemen, stevedores, port authorities and other performing party, unless there are evidence to prove that the company failed to exercise due diligence in selecting, instructing or supervising such third parties.

7.4. Where the company is liable as principal, whether by implied or expressed undertaking or through providing the ancillary services as an independent contractor, the customer shall provide such evidence of the company's negligence as principal, including any independent third party investigation survey report, to the company within 21 calendar days upon the arrival of the goods at destination or on such date the goods should have arrived at destination.

7.5. If the company is liable in respect of loss following delay or deviation of the vessel or the conveyance, such liability shall only be limited to an amount not exceeding the remuneration relating to the service giving rise to the delay or deviation or the reasonable additional expenses incurred in respect of the reasonable recovering of delay following deviation.

7.6. Where the goods have not been delivered to the destination within a period of 90 calendar days after the date the goods ought to have been delivered, in the absence of evidence to the contrary, the goods shall be treated as lost. The value of the goods for the assessment of compensation of loss or damage shall be determined according to the current commodity exchange price index or, if there is no such price indication available or applicable, according to any reasonable market value or, by reference to the normal value of the goods of the same kind and quality but in no event shall exceed that which is originally contained in the documentary evidence.

7.7. The company shall in no event be liable for valuables or dangerous goods unless the value and/or nature of the goods has been declared and expressly agreed by the company in writing and noted accordingly in the Bill of Lading or Waybill provided however that the company shall not be liable for the maximum loss or damage as contained therein.

7.8. In the event the company is proven to be liable for any loss or damage, including any financial loss resulting from any error or omission suffered by the customer, the liability shall be based on the principle of indemnity and limited to RM2,800.00 (Malaysian Ringgit Two Thousand Eight Hundred Only) payable per shipping unit or RM5.00 (Malaysian Ringgit Five only) per gross kilogram weight on the goods lost or damage. Notwithstanding the limitation contained herein, the maximum liability of the company for any loss or damage shall not under any circumstances exceed RM100,000.00 (Malaysian Ringgit One Hundred Thousand only) or such other amount in equivalent currency whichever is applicable.

#### 8. General Exclusions and Time Bar

8.1. The company shall not be liable for any loss of profit, loss of market and/or loss of opportunities caused by any delay or deviation of the vessel and/or any unreasonable delay in delivery or taking delivery of the goods at such date the goods should have been delivered provided that the company is proven to be principally negligent.

8.2. In any event, where any physical loss or damage to the goods has occurred, upon first discovering such loss or damage when delivery of the goods has been delivered, unless notice in writing is given within 14 calendar days upon arrival of the goods, together with any independent third party investigation survey report, the goods are deemed to have been delivered without damage.

8.3. Unless otherwise expressly agreed in writing, the company shall be discharged from all claims and any further liability for any direct and indirect loss of or damage to the goods provided that action is brought within nine calendar months after the delivery of the goods, or the date when the goods should have been delivered, or the date when the goods is treated as lost.

8.4. Any claim not made and notified accordingly shall be time barred except where the customer can show that it was impossible to comply within the time limit stipulated.

### LAW AND JURISDICTION

#### 9. Application of Malaysian law and legal forum

9.1. Unless otherwise agreed, any action against the company may only be commenced in Malaysia where the company has its principal place of business and shall be decided according to the applicable legislations and/or conventions including its subsequent amendments or enactments. Where the action against the company commenced at any place other than Malaysia, the application of Malaysian law and/or applicable conventions shall be mandatory.

9.2. All commercial disputes arising from the contract of carriage incorporating the STC contained herein shall be firstly resolved by negotiation and/or arbitration in accordance with the Arbitration Act (2005) and/or its subsequent amendments where applicable unless the court summarily agrees otherwise that the disputes may not be determined by arbitral process.

#### 10. Notices and Communications

10.1. All notices and communications between the company and the customer shall be made to the last known address in writing through normal post or by emails and by any other electronics means of communication shall be considered delivered and received upon any acknowledgement or return receipt generated in response to the message sent.

10.2. Where notices and communication is not capable of being delivered to the last known address for any reason whatsoever, the notices and communication shall be considered delivered upon being posted on a public board or advertised or published in any public media or customary forum.