

REVISED VERSION 1  
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**FEDERATION OF MALAYSIAN FREIGHT  
FORWARDERS**

**2010 - 2011  
STANDARD TRADING CONDITION**

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## GENERAL STANDARD TRADING CONDITIONS

NOTICE: Customers are advised that any business transactions with Federation of Malaysian Freight Forwarders (FMFF) members are governed by the Standard Trading Conditions as contained herein. If not specified in any written contract, these conditions are deemed to be 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 constructed 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 any of its subsequent amendments or enactments, if any.

1.2. All transactions entered into between members of the Federation of Malaysian Freight Forwarders (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 its subsequent amendments or enactments, if any.

1.3. The customers, by notice contained in any transactional advices, agree and acknowledged that the STC are 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 its 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 parties operating and contracting as carriers or representative agents of carriers.

### 2. Definitions

2.1. "Arbitration" shall mean the conduct of resolution of the 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.

2.2 "Association" whether used in the singular or plural form shall mean the FMFF which is a mutual society duly registered under Section 2 of the Societies Act (1966) and has its 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.

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 in the applicable legislations and/or conventions.

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 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 distributions 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 member.

2.9. "Dangerous Goods" and "Strategic Items" shall bear the same meaning as that contained in the Strategic Trade Act 2010 and any applicable legislations and/or conventions governing "Dangerous Goods" or "Strategic Items" and shall include but not be limited to certain graded and controlled liquids, chemicals, poisons or nuclear items and materials, flammable goods, and any military materials or goods, equipments, materials and related technologies, including its shipping units, which by itself when mishandled or when properly assembled, will cause or likely to cause or 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 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 member 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 in 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 member 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 all the applicable laws of Malaysia and where incorporated or applicable, the international multimodal conventions including, the Hague-Visby Rules (1968); Hamburg Rules (1978); the Rotterdam Rules (2009) and the CMR (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 destination, other than a Port, as contained in the Bill of Lading or Waybill.

2.18. "Port-to-Port" means the member contracts to carry the goods from the Port of Origin, including any transshipment ports, to the Port of Destination.

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 carriage of the goods to a destination.

2.20. "Special Drawing Rights" or "SDR" means the unit of monetary value or compensation as determined by the International Monetary Fund.

2.21. "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 member is not obliged to advise, procure or effect marine cargo insurance cover on the goods unless the customer has given specific instructions for the member to acquire such insurance coverage to indemnify the shipper or consignee or any other persons legally vested with interest for the safe delivery 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 member collects the premium as part of the handling charges for the carriage of goods. The member does not undertake any professional liability or responsibility to ensure that the coverage so acquired is sufficient or provides comprehensive indemnity for the loss or damage on 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 be required to acquire a banker's guarantee as required security and/or deposit such required cash collaterals 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 incurring therefrom the date the incident occurs and shall indemnify the member accordingly for such further costs and expenses.

4.2. Where documentary title to the goods has not yet passed or is prevented by any legislation from being passed, the customer is still interested as the shipper and shall indemnify the member 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 dispute with the consignee or any other buyer 30 calendar days after arrival of the goods or from the date such disputes arise, the member shall be vested with a General Lien on the goods where the goods are commercially viable and not prevented by any legislation from being disposed commercially, 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 or recover any further costs and expenses.

4.4. All negotiations and correspondences taking place between the member and their appointed destination agent or representative to attempt delivery or taking delivery of the goods and/or to resolve the disputes arising between the shipper and consignee and other legally interested parties or the Authority where the goods are governed by such legislation, are conducted as agent for and on behalf of the customer and/or the 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 arrangements or by public notification, the nett proceeds shall accordingly be used to defray the cost of auction, the costs and expenses owing to the company and then the customer and/or 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.

4.7. Where the goods are prevented from being delivered or disposed or where such goods fall under the control of the Authority and determined as "strategic items" and governed by certain legislation, the company shall not be liable for any loss of or damage to the goods countermanded or required or confiscated or detained by the Authority.

4.8. Where required and where governed by any legislation, the company shall render such assistance as required by the Authority, including but not limited to the revelation or disclosure of such identification of the persons involved with the shipment and sources of the goods received from or packed or delivered so as to enable the Authority to require and secure such evidence of the transactions of the goods from the customer.

4.9. Notwithstanding the above, the customer agrees that the company is only acting as its agent and shall not be privy to the information and or details of the shipment where "strategic items" procured in breach of any legislation are involved. In the event of any requirement or order by the Authority, the customer shall take over such conduct directly with the Authority.

## **5. General delivery obligations**

5.1. The company shall carry out its 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 provided however that where the goods are "strategic items", the company shall not be obliged undertake such supplementary actions.

5.2. The member 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.