



FORWARDING AND WAREHOUSING TERMS AND CONDITIONS

Mercury Resources LLC

Effective as of 10 October 2023

Customer acknowledges and agrees that the Company may amend this Forwarding and Warehousing Conditions from time to time and without notice. Customer undertakes to keep itself apprised and updated with the latest Forwarding and Warehousing Conditions available at www.mercuryresources.com

Table of Contents

CHAPTER I.....	3
GENERAL PROVISIONS.....	3
1. Definitions.....	3
2. Application of Forwarding and Warehousing Conditions.....	4
3. Formation of Contract.....	5
4. Owner of Goods, Title and Claims to Goods.....	6
5. Sub-contracting.....	6
6. Methods, Procedures and Routes.....	6
7. Documents to be provided to the Company.....	6
8. Accuracy of Descriptions of the Goods and Quality of the Goods.....	7
9. General Term for Payment of Fees.....	7
10. Insurances.....	8
11. Liability of the Parties.....	9
12. No Warranty; No Consequential Damages; Limitation of Liability and Time Bar.....	10
13. Declaration.....	11
14. Force Majeure.....	11
15. Hazardous and other Goods.....	12
16. Lien and Right of Retention of Goods, Documents, etc.....	13
17. Indemnity.....	14
18. Time bar.....	15
19. Governing Law and Jurisdiction.....	15
20. Miscellaneous.....	16
21. Termination.....	17
CHAPTER II.....	20
FORWARDING CONDITIONS.....	20
22. Transportation.....	20
22A. Transportation by Barge.....	20
23. Delivery / Loading / Unloading.....	26
24. Warehousing / Storage / Packing of the Goods / Containers.....	28
25. Tallying / Weighing / Measuring of the Goods.....	29
26. Sale or Disposal of Goods.....	29
CHAPTER III.....	30
WAREHOUSING CONDITIONS.....	30
27. Warehouse Receipt & Release of Goods.....	30
28. Instructions, Tenders, etc.....	31
29. Accuracy of Description of the Goods and Quality of the Goods.....	31
30. Weighing / Measuring of the Goods.....	32
31. Delivery of the Goods to Company.....	32
32. Commencement of Services and Speed of carrying out the Services.....	32
33. Times for Delivery and Collections of the Goods.....	33
34. Place of Storage of the Goods.....	33
35. Liability for Loss of or Damage to the Goods.....	33
36. Admittance to place of storage.....	34
37. Services.....	35
38. Hazardous and other Goods.....	35
39. Damage or Destruction of the Goods.....	36
40. Removal of the Goods.....	36
41. Fees, Rates and Payment Terms.....	37
42. Sale or Disposal of the Goods.....	37

CHAPTER I GENERAL PROVISIONS

Definitions

“Agreement” means any contract formed between the Company and Customer as stipulated in Clause 3 hereof; *provided, however*, that with respect to transportation by barge transactions of the nature set forth in Clause 22A, “Agreement” means any contract formed between the Company and Customer as stipulated in such clause.

Company” means Mercury Resources LLC.

Court” shall mean any state or federal court located in Suffolk County, NY.

“Customer” means:

(a) Any party who signs a contract with the Company including any third party which becomes a party to the contract between the Company and the Customer; and/or

(b) Any holder of Warehouse Receipt to whom such Warehouse Receipt is issued to by the Company or any subsequent legitimate holder of such Warehouse Receipt obtained in accordance with Clause 26 herein below; and/or

(c) Any subsequent legitimate party who has the relevant legitimate right to the Goods stored with the Company; and/or

(d) A Person with whom the Company has agreed to provide or provided with Forwarding and/or Warehousing Services per Clause 3 (Formation of Contract) or Clause 22A.1 (Formation of Contract for Transportation by Barge), as applicable.

“Forwarding and Warehousing Conditions” means the forwarding and warehousing conditions of the Company stipulated in Chapter 2 and 3 herein, reading together with Chapter 1 General Provisions.

“Forwarding Conditions” means the forwarding conditions of the Company stipulated in Chapter 2 herein, reading together with Chapter 1 General Provisions.

“Warehousing Conditions” means the warehousing conditions of the Company stipulated in Chapter 3 herein, reading together with Chapter 1 General Provisions.

“Goods” means the goods in respect of which the Services are provided by the Company or are to be provided by the Company pursuant to the Agreement and/or the goods to which the Warehouse Receipt refers to.

“Laws” shall mean all federal, state and local laws, statutes, codes, ordinances, rules, and regulations, including by way of example, but not of limitation, all laws and requirements of all governmental and quasi-governmental authorities, applicable to, or having jurisdiction over, the Services and/or the Goods, and “Law” shall mean one or any of them.

“Person(s)” means any individual, company, limited liability company, corporation, firm, partnership, joint venture, association, sole proprietorship, or other business entity.

“Fees” means the fees which shall be chargeable by the Company to the Customer for the provision of the Services as agreed to in the Agreement.

“Services” means any and all services provided or to be provided by the Company to the Customer pursuant to the Agreement or as instructed by Customer in writing, including but not limited to, the scope of services as stated in Chapter 2 “Forwarding Conditions” and Chapter 3 “Warehousing Conditions”.

“Warehouse Receipt” means a warehouse receipt issued by the Company subject to Clause 26 herein.

“Working Hours” means 8:30a.m. to 5:30p.m. New York time or other applicable local time on Mondays through Fridays, except those days designated as holidays by the Company.

Words in the singular include the plural and words in the plural include the singular, as the context requires.

2. Application of Forwarding and Warehousing Conditions

21 The Forwarding and Warehousing Conditions shall be applicable to all and any business, including but not limited any advice, information or Services, provided or to be provided by the Company to any Customer, for a fee or otherwise. The Forwarding and Warehousing Conditions shall be deemed to be incorporated in and form as an integral part of any Agreement made between the Company or any Customer as per Clause 3 (Formation of Contract) or Clause 22A.1 (Formation of Contract for Transportation by Barge), as applicable.

22 Any other terms and conditions (howsoever called) or forms used by the Customer shall not be applicable to or be deemed incorporated into the Agreement. For avoidance of doubt, the applicability of general terms and conditions of the Customer and/or its subcontractor(s), whether or not printed on its documents, are explicitly rejected by the Company.

23 Any variation to the Forwarding and Warehousing Conditions (including any special terms and conditions agreed between the parties) shall be inapplicable unless agreed to in writing by the Company. **THESE FORWARDING AND WAREHOUSING CONDITIONS EXPRESSLY LIMIT ACCEPTANCE TO THE TERMS AND CONDITIONS STATED HEREIN. ANY ADDITIONAL OR DIFFERENT TERMS OR CONDITIONS, WHETHER IN A PROPOSAL, PURCHASE ORDER, ACKNOWLEDGEMENT, ACCEPTANCE OR OTHERWISE, ARE REJECTED AND SHALL NOT APPLY UNLESS EXPRESSLY AGREED TO IN WRITING BY AN AUTHORIZED REPRESENTATIVE OF THE COMPANY NOTWITHSTANDING ANY CONTRARY LANGUAGE PROPOSED BY CUSTOMER THAT ANY ACT OR**

FAILURE TO ACT BY THE COMPANY CONSTITUTES ACCEPTANCE OF ANY DIFFERENT OR ADDITIONAL TERMS OR CONDITIONS.

24 The Customer acknowledges that the Company is not a common carrier and the Company handles the Goods subject to these Forwarding and Warehousing Conditions.

25 No agent or employee of the Company has the Company's authority to alter or vary these Forwarding and Warehousing Conditions.

26 If any legislation is compulsorily applicable to any business or Services undertaken by the Company, the Forwarding and Warehousing Conditions shall, as regards such business or Services, be read as subject to such legislation and nothing in the Forwarding and Warehousing Conditions 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 the Forwarding and Warehousing Conditions shall to any extent be repugnant to such legislation, such part of the Forwarding and Warehousing Conditions shall as regards such business or Services be void to that extent but no further.

3. Formation of Contract

31 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. The Company has absolute discretion whether or not to accept any order or instruction from the Customer. The Company may refuse to accept any order or instruction for any Services without any obligation to provide any reasons. Instruction received by the Company after 3 p.m. on a Business Day shall be considered receiving on the next Business Day.

32 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 Forwarding and Warehousing Conditions). Such contract, together with these Forwarding and Warehousing Conditions, shall be deemed the "Agreement".

33 Customer shall not assign or transfer the benefit of and rights under any Agreement made with the Company without prior written consent of the Company. Such consent may be subject to such additional terms as the Company may deem necessary.

34 Notwithstanding anything set forth herein to the contrary, with respect to transportation by barge transactions of the nature set forth in Clause 22A hereof, formation of contract shall be determined as set forth in such clause.

4. Owner of Goods, Title and Claims to Goods

4.1 The Customer expressly represents and warrants that it is either the owner or the authorized agent of the owner of the Goods and further represents and warrants that it is authorized to accept and is accepting these Forwarding and Warehousing Conditions not only for themselves but also as agents for and on behalf of all other Persons who are or may thereafter become interested in the Goods.

4.2 Without prejudice to Clause 4.1 the Company shall have the right to enforce the Forwarding and Warehousing Conditions not only against the Customer but also against the sender and/or consignee and/or owner of the Goods to the extent permitted by Law.

4.3 All rights of ownership and title over the Goods shall be established and verified by the Customer, or between Customer and its client or other third party, and it is acknowledged and understood that the Company has no responsibility or liability with respect to any conflicting claims arising out of a dispute contesting rights of ownership or title to the Goods.

5. Sub-contracting

5.1 The Company shall be entitled to sub-contract its obligations to perform the Services, in whole or in part, on such terms and conditions as the Company deems appropriate in its sole discretion.

6. Methods, Procedures and Routes

6.1 Subject to the express written instructions by the Customer, the Company shall be entitled at its absolute discretion to decide on the means, route and procedure to be followed in the handling, storing, transporting and/or forwarding of the Goods. Notwithstanding the foregoing, the Company shall be at liberty to depart from the Customer's instructions if, in the opinion of the Company, it is at any stage necessary or desirable in the Customer's interest to do so.

7. Documents to be provided to the Company

7.1 The Customer shall ensure that all instructions, information and documents are provided promptly to the Company to enable the Company to perform its Services. The Customer shall ensure that all such instructions, information and documents provided are true and accurate till the termination of Agreement.

7.2 The Customer shall be liable for all consequences arising from the provision of inaccurate, obscure and inadequate instructions, information and/or documents; any failure to furnish any instructions, information and/or documents; or any failure to furnish any instructions, information and/or documents in time.

7.3 The Company shall not be obliged to furnish a confirmation for the receipt of such instructions, information and documents provided by the Customer.

7.4 The Company is under no obligation to inquire into the genuineness, authenticity or accurateness of any such instructions provided by the Customer to the Company.

8. Accuracy of Descriptions of the Goods and Quality of the Goods

8.1 The Customer represents and warrants and is bound by the accuracy of all descriptions, values and other particulars and/or information furnished to the Company in respect of the Goods for the purposes of customs clearance or any other purposes whatsoever.

8.2 The Company shall not be considered to be, and shall not act as an expert in relation to, the nature or quality of the Goods and shall not be required or be obliged to provide any notification to any party whatsoever in relation to the state, nature or quality of the Goods.

8.3 The Company shall be under no obligation to ensure that the samples of the Goods are identical with or match the Goods as described by the Customer or that the Goods conform with the description of the Goods provided by the Customer.

9. General Term for Payment of Fees

9.1 The Customer shall pay the Fees to the Company within fourteen (14) days from the date of invoice.

9.2 The Company shall be entitled to charge the Customer a reasonable amount in addition to the Fees for any operations of an unusual nature and/or which requires additional time or effort to carry out.

9.3 All quotations are valid during the time of offer by the Company and are subject to withdrawals or revisions before acceptance by the Customer. Unless otherwise agreed to in writing by the Company, the Company shall be at liberty to revise a quotation after its acceptance by the Customer with or without prior notice to the Customer, in the event of any changes in the currency exchange rates, rates of freight, insurance premiums, general port charges and any other rates or charges on which the quotation to the Customer was based, regardless of the cause of such changes.

9.4 The Company may at any time require pre-payment from the Customer for any costs and expenses which may be incurred in relation to the Services. Refusal of Customer to provide such pre-payment gives the Company the right to refuse, suspend, interrupt, or terminate the Services without providing any written notification. The Company shall at no event be under any obligation to make any payments whatsoever to perform any Services on behalf of the Customer until the Company has received the required pre-payment.

9.5 The Customer shall be liable for any duties, taxes (whether existing, new or increased), fees, tariffs, imposts, levies, deposits, tolls or outlay of any kind whatsoever which are levied or imposed by the authorities at any port or place in connection with the Goods, and for any payments, fines, expenses, loss or damage whatsoever incurred or sustained by the Company in connection therewith (collectively, "Taxes and Other Payments").

9.6 In the event that the Customer fails to pay any amounts which are due and payable hereunder or upon notification thereof by the Company, interest shall be payable on such amounts at the rate of 2% per month, or the maximum amount permitted by applicable Law, whichever is less.

97 The Customer shall upon demand by the Company furnish a deposit or security for any amount which the Customer is or may be indebted to the Company.

98 All monies owed to the Company by the Customer shall be paid to the Company immediately when due without deduction, discount or rebate whatsoever and payment shall not be withheld or deferred on account of any claim, counterclaim or offset.

99 In the event that the Company resorts to any legal proceedings or other means for the recovery of any amounts due and payable by the Customer hereunder (the "Indebtedness"), the Customer shall, in addition to the Indebtedness and interest payable under Clause 9.6, be liable to the Company for a further amount equivalent to 10% of the Indebtedness on account of all clerical expenses which may be incurred by the Company in resorting to such proceedings or other means.

10. Insurances

10.1 The Company does not provide, and shall not be obliged to take out, any insurance on the Goods for any risks whatsoever. In the event that the Customer requires the assistance of the Company to take out any insurance on the Goods for and on behalf of the Customer, the Company may upon the written request by the Customer and at its sole and absolute discretion, take out insurances on the Goods against such insurable risks as may be notified by the Customer. The Company shall not incur any liability whatsoever to Customer or to any other Person in the event it elects not to procure any such insurance. All insurances on the Goods shall be taken out at the Customer's sole expense and risk, and shall be subject to the usual exceptions and conditions of the policies of the relevant insurance company or underwriters. By requesting the Company to take out any insurances, the Customer authorises the Company to make all arrangements with the insurer at the Company's sole discretion, including arrangements regarding the conditions of insurance and settlement of claims in respect of any damage.

10.2 The insured value of the Goods shall be the value stated in writing by the Customer or the Company's estimate of the current value of the Goods, as determined by the Company, in its sole discretion. The risks required to be covered shall be clearly stated in writing by the Customer to the Company. A mere statement by the Customer of the value of the Goods is not sufficient and the Company shall not be obliged to take out any insurance on the Goods where it is not sufficiently informed of the risks or the insured value to be covered.

10.3 The Company shall not be under any obligation to effect a separate insurance on each consignment but may declare any open or general policy to be applicable to the entirety of the Goods.

10.4 In the event that any insurer disputes its liability under any insurance relating to the Goods for any reason, the Company shall not be under any obligation, responsibility or liability whatsoever in relation thereto notwithstanding that the Company may have charged the Customer any arrangement fees in taking out such insurances on behalf of and/or at the request of the Customer.

105 In the event that the Company arranges insurance on the Goods in its own name, it shall, if so requested by the Customer, transfer or assign its rights to claim under such insurance to the Customer.

106 The Company shall not be responsible whatsoever as regards the choice of the insurer and/or its ability to pay under the insurances, nor shall the Company be liable for any inability to take out insurances requested by the Customer, by reason of an insurer's requirements which the Company considers, in its sole opinion, to be unreasonable.

107 Where the Company utilizes derricks and/or any other such equipment for carrying out the instructions given by the Customer, it shall be entitled to arrange insurance at the Customer's sole expense to cover the Company's risks arising from the use of such equipment.

108 When acting as authorized agent by virtue of Clause 10.1 herein, the Company shall be entitled to collect the amount of any claims paid out by any insurer. The Company shall be entitled to deduct any amounts that are due and payable by the Customer to the Company from any amounts received by the insurer before paying the balance to the Customer.

109 The Company shall not be liable for any loss arising from the failure or refusal by any insurer to pay in full or in part any amounts under any insurance as a result of any circumstance for which the Company cannot be held liable regardless of the manner in which the insurance was effected by the Company and notwithstanding that the Company may have charged the Customer any arrangement fees in taking out such insurances on behalf and/or at the request of the Customer.

11. Liability of the Parties

11.1 All operations and activities relating to the Goods carried out by the Company in the provision of the Services shall be at the Customer's sole expense and risk.

11.2 The Customer shall be liable for all losses, damage and expenses suffered or incurred by the Company as a result of any action or inaction on the part of the Customer, its employees, agents and/or contractors or which may in any way be caused by the Goods entrusted by the Customer to the Company.

11.3 The Company shall not be liable to the Customer or to any other Person in respect of any damage to the Goods unless such damage is proven to have been caused intentionally by the deliberate act of any employee of the Company.

11.4 The Company shall not be liable for any loss of the Goods or any part thereof, for any non-delivery or misdelivery of the Goods, or any part thereof, unless such loss, non-delivery or misdelivery is proven to have occurred while such Goods or part thereof were in the actual custody of the Company and under its actual control and that such loss, non-delivery or misdelivery was due to the gross negligence or wilful misconduct of the Company.

11.5 The Company shall not be liable for the non-compliance with any instructions given to it unless it is proven that the same was due to gross negligence or wilful misconduct of the Company.

12. No Warranty; No Consequential Damages; Limitation of Liability and Time Bar

121 THE COMPANY MAKES NO REPRESENTATION OR WARRANTY WITH RESPECT TO THE GOODS OR SERVICES.

122 Limitation of Liability. NOTWITHSTANDING ANYTHING SET FORTH HEREIN OR IN ANY OTHER DOCUMENT TO THE CONTRARY, TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE COMPANY SHALL NOT BE LIABLE TO THE CUSTOMER OR ANY OTHER PERSON FOR ANY CONSEQUENTIAL, EXEMPLARY, INCIDENTAL, OR SPECIAL DAMAGE, COVER DAMAGES OR LOST PROFITS, DIMINUTION IN VALUE, OR ANY OTHER DAMAGES WHATSOEVER RELATING TO OR RESULTING FROM THE TRANSACTIONS CONTEMPLATED BY THE AGREEMENT AND/OR THESE FORWARDING CONDITIONS, REGARDLESS OF WHETHER THE LIABILITY RESULTED FROM ANY GENERAL OR PARTICULAR REQUIREMENT OR NEED WHICH THE COMPANY KNEW OR SHOULD HAVE KNOWN OF AND REGARDLESS OF WHETHER THE CLAIM IN QUESTION IS BASED ON WARRANTY, CONTRACT, NEGLIGENCE, STRICT LIABILITY, TORT OR OTHERWISE. IN THE EVENT THAT ANY TERM OF THE AGREEMENT OR OF THESE FORWARDING CONDITIONS IS FOUND UNCONSCIONABLE OR UNENFORCEABLE FOR ANY REASON, OR ANY EXCLUSIVE REMEDY FAILS OF ITS ESSENTIAL PURPOSE, THIS PROVISION OF THIS WAIVER SHALL NEVERTHELESS CONTINUE IN FULL FORCE AND EFFECT.

123 NOTWITHSTANDING ANYTHING SET FORTH HEREIN OR IN ANY OTHER DOCUMENT TO THE CONTRARY, TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN THE EVENT THE COMPANY IS PROVEN TO BE LIABLE TO CUSTOMER FOR ANY AMOUNTS, IN EACH CASE, REGARDLESS OF WHETHER THE CLAIM GIVING RISE TO SUCH AMOUNT(S) IS BASED ON WARRANTY, CONTRACT, NEGLIGENCE, STRICT LIABILITY, TORT OR OTHERWISE, THE MAXIMUM AGGREGATE LIABILITY OF THE COMPANY ARISING OUT OF OR RELATING TO THE AGREEMENT OR THESE FORWARDING CONDITIONS OR THE TRANSACTIONS CONTEMPLATED HEREBY SHALL NOT EXCEED THE LESSER OF (a) THE ACTUAL VALUE OF THE DAMAGED OR LOST GOODS (AS EVIDENCED BY THE RELEVANT INVOICE(S) RELATING TO THE GOODS), (b) THE AGGREGATE FEES PAID UNDER THE AGREEMENT, or (c) \$100,000.

124 The Company may, by a written agreement with the Customer, accept liability in excess of the limits set out in Clause 12.3 above provided that the Customer agrees to pay the Company's additional charges for accepting such increased liability. Details of the Company's additional charges shall be provided upon request.

125 Notwithstanding anything set forth herein to the contrary, the Company shall have no liability to Customer or to any other Person whatsoever and the Company will be discharged from any and all such liability whatsoever to the Customer unless:

(a) in respect of any damage to the Goods or any part thereof, a notice in writing by the Customer is received by the Company within seven (7) days after the Customer takes delivery of the Goods; and

(b) in respect of any loss or non-delivery of the Goods or any part thereof, a notice in writing by the Customer is received within fourteen (14) days of the date when the Goods or such part thereof should have been delivered.

12.6 Notwithstanding the provisions of Clause 12.4 above, in no event shall the Company be liable to the Customer or to any other Person whatsoever with respect to any Services provided to the Customer whatsoever and howsoever arising, or with respect to any Services which the Company has undertaken to provide, unless written notice thereof is given to the Company and suit is brought against the Company within twelve (12) months from the date of the event or occurrence alleged to give rise to a cause of action against the Company.

12.7 The defenses and limits for liability set forth in these Forwarding and Warehousing Conditions shall apply in any action against the Company whether such action is based on warranty, contract, negligence, strict liability, tort or otherwise.

12.8 Nothing contained herein shall preclude Company from availing itself of the limitation of liability provisions of maritime law.

13. Declaration

13.1 The Company shall be under no obligation whatsoever to make any declaration which may be required under any Law, convention or contract as with regards to the nature or value of the Goods or with regards to any special requirements relating to the delivery of the Goods unless expressly instructed by the Customer in writing and the Company agrees in writing to make such declaration or expresses such agreement by making such declaration.

13.2 The Customer represents and warrants that the Customer shall be responsible for any restriction or penalties which may be imposed by Law, relevant authorities or any other jurisdiction over the Goods, including by way of example, but not of limitation, limit of bonded storage as may be imposed by such authorities or any other applicable rules; and Customer shall bear the responsibility for any cost and/or failure to comply with the Laws of such authorities which may result in fines, penalties or confiscation.

14. Force Majeure

14.1 The Company shall not be liable for any loss, damage, destruction or deterioration of the Goods, or for any delay in the performance or non-performance of any of the terms set forth herein that arise in whole or in part to any cause not within the control of the Company, whether now or hereafter existing, including without limitation, the following (each a "Force Majeure Event"):

(a) existing or threatened war, declared or undeclared war, hostilities, warlike operations, civil war or civil commotion, terrorism, revolution or the operations of international law, official action, quarantine, civil disturbance, governmental decree, requisitioning, legislation or expropriation, confiscation orders, court orders, injunctions or third party claims, strikes, lockout, sabotage or power breakdown, interference with communications, lack of transport, labor and/or storage accommodation;

- (b) storm, fire, fog, lightning, flood, high and low tide, frost, freezing, ice, heat, smoke, explosion, water used for extinguishing fire, burst water piping, tempest, earthquake, typhoon or other extraneous calamity or acts of God;
- (c) subsidence and/or collapse of the ground and/or any storage facility, water leakage or seepage, dampness, odour, stench, worms and rodents, damage through rats, mice, insects and other creatures;
- (d) the natural properties of the Goods, inherent changes in quality, spontaneous deterioration, self-generated heat, combustion, explosion, drying, mould, yeasts, leaks, rot and mildew, rust and sweating;
- (e) breakage of glass, wickered bottles and flasks, cast-iron and other brittle articles, inadequate packing;
- (f) hardship or any other circumstances making performance unreasonably burdensome; or
- (g) all other causes which are beyond the control of the Company.

142 If a Force Majeure Event occurs which prevents, hinders or delays the performance of the Company pursuant to any Agreement, and the same continues for more than six (6) months or cannot be permanently removed, the Company may terminate such Agreement with Customer with immediate effect, without any further liability to the Customer, except that the Customer shall immediately become liable for any fees incurred up to and including the date of termination.

143 All additional costs which may be incurred as a result of a Force Majeure Event, including but not limited to transportation and storage charges, warehouse or yard rentals, demurrage for vessels or trucks, insurance premium, charges in respect of delivery from warehouses, bonded or otherwise, shall be borne by the Customer and shall form part of the debt due and owing to the Company by the Customer mentioned in Clause 9 "General Term for Payment of Fees" hereof on which interest shall be chargeable.

15. Hazardous and other Goods

15.1 Except under special arrangements previously agreed to in writing by the Company, the Company shall not accept or handle any noxious, dangerous, hazardous or inflammable or explosive Goods or any Goods which, in the opinion of the Company, is likely to cause damage to any Person or property whatsoever, as determined by the Company in its sole and absolute discretion. Should the Customer nevertheless deliver any such Goods to the Company or cause the Company to handle any such Goods otherwise than under special arrangements previously made in writing between the parties, the Customer shall be liable for all losses, damage or expenses whatsoever caused, suffered or incurred by the Company or any losses or damage caused to or in connection with the goods however arising. Such Goods may be destroyed or otherwise dealt with at the Customer's sole risk and expense and at the sole and absolute discretion of the Company or any other Person in whose custody the goods may be at the relevant time. If such Goods are accepted under any arrangement previously made in writing, they may nevertheless be destroyed or dealt with in any manner at the sole and absolute discretion of the Company on account of risk to other goods, property, life or

health. The expression “goods likely to cause damage” includes goods which are likely to harbor or encourage vermin or other pests.

152 Except under special arrangements previously made in writing between the parties, the Company shall not accept or handle any bullion, corns, precious stones, jewelry, valuable, antiques, pictures, livestock or plants. Should the Customer nevertheless deliver any such goods to the Company or cause the Company to handle any such goods otherwise than under special arrangements previously made in writing between the parties and agreed to in writing by the Company, the Company shall be under no liability whatsoever for, or in connection with, any loss and/or damage to the Goods.

16. Lien and Right of Retention of Goods, Documents, etc.

161 The Company shall be entitled to retain the Goods, any document relating to the Goods and moneys which the Company may hold on behalf of the Customer at the Customer’s sole expense and risk until the Fees and all other charges, costs and expenses which are due and payable to the Company has been paid to the Company or, if the Goods are to be forwarded on to other parties, to collect the sum due on the subsequent delivery or draw a bill therefore with the shipping documents annexed.

162 All such Goods, documents and/or moneys shall be held by the Company subject to a general lien and right of retention whether such lien and right are afforded by Law, the Forwarding and Warehousing Conditions or otherwise, for money due to the Company whether in respect of the Fees, demurrage or for any other amounts arising out of the Agreement, including expenses, charges or costs payable to the company by the Customer and/or the owner of the Goods, or upon any breach or repudiation of the Agreement. The lien and right of retention shall also extend to any insurance claims collected on behalf of the Customer by the Company, and as far as necessary, the right shall be deemed to have been transferred to the Company for further security.

163 In the event that the Customer fails to make payment of the Fees or any other moneys whatsoever due to the Company within fourteen (14) days after notice has been given to the Customer to make payment, the Company shall be entitled to utilize any and all such moneys held by the Company and/or sell the Goods by auction, private sale or otherwise at the Company’s sole and absolute discretion and at the expense of the Customer and the net proceeds (after deduction of sale expenses, storage charges, etc.) may be applied by the Company in or towards satisfaction of such indebtedness by the Customer to the Company. Provided that in the case of perishable goods, the Company need not await the expiry of the aforesaid fourteen (14) days and may exercise such rights of sale earlier at the Company’s sole and absolute discretion. Any balance of the proceeds from the sale of the Goods and/or any balance of the moneys held by the Company after the proceeds of sale and/or the moneys have been applied in or towards the satisfaction of such indebtedness by the Customer to the Company will be paid to the Customer.

164 The Customer shall still be responsible for storage fees and any other applicable fee for the Goods during detention under the lien.

165 To the extent permitted by applicable Law, the lien upon the Goods will survive the delivery of the Goods.

17. Indemnity

17.1 The Customer covenants and agrees to indemnify, defend (with counsel acceptable to the Company), save and hold harmless the Company, its subsidiaries and affiliates, and their respective officers, directors, agents, employees, successors and assigns (collectively, the “Indemnitees”), from and against any and all Losses (as hereinafter defined) of whatsoever kind and nature, whether incurred by the Company or alleged by others, in warranty, contract, negligence, strict liability, tort or otherwise, arising in whole or in part as a result of, or in connection with, any of the following: (i) any breach of the Agreement or these Forwarding Conditions by Customer, its directors, officers, employees, agents, subcontractors or parties on whose behalf Customer is acting and entering into the Agreement (collectively, the “Customer Parties”), (ii) negligence (whether or not gross), bad faith or wilful misconduct of any Customer Party, (iii) any defect of any kind in the Goods, (iv) any act or omission of any Customer Party, (v) violation of any Law by any Customer Party, (vi) an Indemnatee following the instructions of any Customer Party or implementing any such instruction, (vii) any servant, agent or subcontractor or any hauler, carrier, warehousemen, or other Person or party whomsoever who may at any time be involved with the Goods, (viii) any insufficiency of the packing of the Goods, (ix) any one or more of the matters provided for in Clause 23.3 below, (x) the Company’s furnishing of a confirmation for the receipt of the Goods pursuant to Clause 7.3, (xi) inaccuracy of any descriptions, particulars and/or information concerning the Goods that is furnished by a Customer Party or on its behalf, even if such inaccuracy is not due (whether in whole or in part) to any negligence or fault on the part of a Customer Party, (xii) any and all Taxes and Other Payments, (xiii) failure any Customer Party to pay any indebtedness, (xiv) any injury to or death of any Person or damage to property caused by or resulting from the Goods and/or the action or inaction on the part of any Customer Party, (xv) in connection with Clause 18.1, and (xvi) any general average (voluntary sacrifice) or any claims of general average (claims for extra-ordinary expenditures incurred). As used in these Forwarding and Warehousing Conditions, “Losses” means any and all liabilities, obligations, suits, claims, losses, damages, judgments, awards, fines, penalties, injuries, actions, costs, fees and expenses (including attorneys’ fees and disbursements and costs of investigation, litigation, alternative dispute resolution, settlement, judgment, interest and penalties).

17.2 The indemnification provided for herein is without prejudice to any other rights or remedies any Indemnatee may have under any Law. Matters covered by the foregoing indemnity including by way of example, but not of limitation: (i) damages for personal injury, disease or death; (ii) damages for injury to personal or real property; (iii) natural resource damages; (iv) any and all costs or recalls of such Goods or products, including by way of example, but not of limitation, costs incurred in transportation, labor, removal, installation, fines, penalties and attorneys’ fees, and (v) all expenses, costs and fees incurred by any Indemnatee as a result of any claim for indemnification hereunder.

17.3 To the extent permitted by Law, if any Customer Party enters upon any premises owned, leased or controlled by any Indemnatee, such Customer Party hereby waives, and hereby agrees to indemnify, defend and hold the Indemnitees harmless from, any and all Losses that any such Customer Party may have or incur as a result of their presence on said premises, whether or not arising out of any act or omission (whether or not negligent) of any Indemnatee.

174 Nothing set forth in any indemnity set forth in these Forwarding and Warehousing Conditions is intended to require any Customer Party to indemnify an Indemnitee against such Indemnitee's gross negligence or wilful misconduct.

175 This indemnity shall survive the expiration, termination or cancellation of the Agreement.

18. Time bar

181 In no event shall the Company be liable to the Customer or to any other Person with respect to any loss, damage or decrease in quantity of the Goods or in general, on account of failure by the Company to comply with any of its obligations whatsoever or howsoever arising, unless written notice thereof is given to the Company and suit is brought against the Company within twelve (12) months from the date of the event or occurrence alleged to give rise to a cause of action against the Company. In relation to any loss, damage or decrease in quantity of the Goods in so far as the Company has not notified the Customer of such loss, damage or decrease in quantity, the said period of twelve (12) months shall commence on the day after which the Company notifies the Customer of such loss, damage or decrease in quantity.

19. Governing Law and Jurisdiction

191 The Agreement shall be governed by and shall be construed in accordance with the Laws of the State of New York without regard to its choice of law provisions, unless otherwise provided in the Agreement or required compulsorily in applicable Law; provided, however, that the Federal Arbitration Act ("FAA"), to the extent inconsistent, will supersede the laws of such State and govern.

192 Unless otherwise provided in the Agreement, the Customer agrees that any claim, dispute, controversy or matter arising out of, under, relating to, or in connection with the Agreement, or its enforceability, including without limitation, any contractual claim, dispute or matter (collectively, "Disputes"), shall be discussed and resolved amicably between the Company and the Customer. If not resolved, the Customer irrevocably agrees to submit to binding arbitration under the commercial arbitration rules of the American Arbitration Association ("AAA") then in effect and such arbitration shall take place in Nassau County, New York. Customer and Company waive any objection based on venue or forum non conveniens with respect to any arbitration instituted therein. Notwithstanding anything set forth herein to the contrary, all notices, arbitration claims, responses, requests and documents will be sufficiently given or served if mailed or delivered to the parties hereto as described herein or as otherwise permitted by Law. Arbitration shall be conducted by a panel of three arbitrators mutually agreeable to Customer and Company and selected in accordance with the commercial arbitration rules of the AAA. Customer and Company agree that all arbitrators selected will be attorneys with at least five (5) years commercial logistics experience. Notwithstanding anything to the contrary in the commercial arbitration rules of the AAA, Customer and Company agree that no discovery or depositions shall be ordered, conducted, or otherwise allowed in any arbitration. The arbitrators shall be limited to awarding compensatory damages and shall have no authority to award punitive, consequential, exemplary or similar type damages. Any award rendered by the arbitrator(s) may be entered as a judgment or order and confirmed or enforced by either party in any state or federal court having competent jurisdiction thereof. If either party brings or appeals any

judicial action to vacate or modify any award rendered pursuant to arbitration or opposes the confirmation of such award and the party bringing or appealing such action or opposing confirmation of such award does not prevail, such party will pay all of the costs and reasonable expenses (including, without limitation, court costs, arbitrators fees, disbursements, expenses and attorneys' fees) incurred by the other party in defending such action. Additionally, if either party brings any action for judicial relief in the first instance without pursuing arbitration prior thereto, the party bringing such action for judicial relief will be liable for and will immediately pay to the other party all of the other party's costs and reasonable expenses (including, without limitation, court costs, disbursements and attorneys' fees) to stay or dismiss such judicial action and/or remove it to arbitration. The failure of either party to exercise any rights granted hereunder shall not operate as a waiver of any of those rights.

193 IN THE EVENT THE AGREEMENT IS FOUND NOT TO BE SUBJECT TO ARBITRATION, (a) COMPANY AND CUSTOMER HEREBY AGREE AND CONSENT TO THE EXCLUSIVE JURISDICTION OF THE FEDERAL AND STATE COURTS LOCATED IN NASSAU COUNTY, NEW YORK AND WAIVE ANY OBJECTION BASED ON VENUE OR FORUM NON CONVENIENS WITH RESPECT TO ANY ACTION INSTITUTED THEREIN, and (b) COMPANY AND CUSTOMER KNOWINGLY AND WILLINGLY WAIVE ANY RIGHT EITHER MAY HAVE UNDER APPLICABLE LAW TO A TRIAL BY JURY IN ANY DISPUTE ARISING OUT OF OR IN ANY WAY RELATED TO THIS PURCHASE AGREEMENT OR THE ISSUES RAISED BY THAT DISPUTE.

20. Miscellaneous

201 Customer is duly authorized to enter into the Agreement and these Forwarding and Warehousing Conditions and to perform its obligations under the Agreement and these Forwarding and Warehousing Conditions and possesses all licenses, permits, consents and approvals required by Law to conduct all business which it conducts with respect to the Goods.

202 No course of prior dealings and no usage of trade shall be relevant to supplement or explain any terms used in the Agreement or in these Forwarding and Warehousing Conditions. The Agreement and these Forwarding and Warehousing Conditions shall be binding upon Customer and its successors and permitted assigns.

203 If any provision of the Agreement or these Forwarding and Warehousing Conditions, or the application thereof, becomes or is declared by a court of competent jurisdiction to be illegal, invalid, void or unenforceable, the remainder of the Agreement and Forwarding and Warehousing Conditions shall continue in full force and effect and the application of such provision to other Persons or circumstances shall be interpreted so as reasonably to effect the intent of these Forwarding and Warehousing Conditions.

204 Customer shall comply with all Laws pertaining to the Goods.

205 The failure by the Company to insist, in any one or more instances, upon the performance of any of the terms or conditions of the Agreement or these Forwarding and Warehousing Conditions, or to exercise any right or remedy hereunder, shall not be construed

as a waiver of the future performance of any such terms or conditions or the future exercise of such right or remedy.

206 The Forwarding and Warehousing Conditions shall be deemed to be incorporated in and form part of the Agreement. All transactions between the Company and the Customer shall be governed by this Forwarding and Warehousing Conditions together with the Agreement. In the event of any conflict between the terms of the Agreement and this Forwarding and Warehousing Conditions, the terms of the Agreement shall prevail. In the event of anything not mentioned in the Agreement, the Forwarding and Warehousing Conditions shall govern.

207 The headings used herein are for convenience only and do not form a substantive part of these Forwarding and Warehousing Conditions. The use of the words “barge” and “party” herein, whether or not capitalized, shall mean both the singular and the plural as intended by the parties.

208 By requesting that the Company perform the Services and/or by executing the booking confirmation and/or other documentation to which these Forwarding and Warehousing Conditions are attached, Customer covenants and agrees to be bound by the terms hereof and represents and warrants the truth and accuracy of the matters set forth herein to be represented and/or warranted by Customer.

209 All parties to the Agreement agree to comply fully with all applicable Laws regarding anti-corruption, including those in the jurisdiction where it is registered and/or is conducting its activities and the jurisdiction where the relevant services under the Agreement will be performed.

20.10 There are no third-party beneficiaries as Company’s obligations hereunder are to Customer only.

20.11 Company is an independent contractor. Neither these Forwarding and Warehousing Conditions nor the Agreement creates a partnership or joint venture and neither party is authorized to act as agent or bind the other. The Agreement shall not be assigned by Customer, whether by operation of law or otherwise, without the prior written consent of Company. In the event of a permitted assignment, Customer shall remain responsible for all of its obligations under the Agreement. Customer shall not disclose the terms or conditions of the Agreement, including rates, to any third party without the prior written consent of Company.

20.12 The Agreement, including these Forwarding and Warehousing Conditions have been proposed by Company as a matter of convenience and each party has had the opportunity to negotiate at arm’s length and to seek independent legal advice from attorneys of their own selection. Accordingly, the Agreement, including these Forwarding and Warehousing Conditions, shall be deemed to have been drafted and prepared by counsel for both Company and Customer for purposes of future construction and interpretation and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions hereof or of the Agreement.

20.13 The Agreement, together with these Forwarding and Warehousing Conditions and any other attachments or exhibits, constitutes the entire agreement between the parties with

respect to the subject matter hereof and supersedes all prior agreements, understandings and arrangements, both oral and written, between the Customer and Company (or any of its affiliates) with respect to such subject matter and merges all prior discussions and writings between them other than as expressly provided herein. The Agreement may only be amended by a writing signed by Customer and Company.

20.14 In addition to, and not in limitation of, any other right or remedy set forth herein, the Company may, without prior notice to Customer, deduct or offset any sum or obligation (whether or not arising under the Agreement) owed by Customer to the Company against any sum or obligation owed by Customer to the Company.

20.15 All notices, consents, determinations, instructions and communications provided for herein shall be validly given, made or served, if in writing and delivered personally, or by facsimile, electronic mail, overnight delivery or recognized courier service or sent by registered or certified mail, postage prepaid, to Company and Customer at their respective addresses listed in the Agreement, or as the parties may otherwise direct in writing. Any notice, consent, determination, instruction, approval, or other communication hereunder shall be deemed given and effective as of the date of delivery in person or by courier, one day after deposit with a nationally recognized overnight carrier specifying next day delivery, as set forth on the return receipt if sent by mail, on the date of the electronic receipt of delivery or date of facsimile confirmation, as applicable.

20.16 The failure of Company to insist upon strict performance of any of the provisions of the Agreement and/or these Forwarding and Warehousing Conditions in one or more instances or the failure of Company to exercise any of its rights hereunder in one or more instances shall not be construed as a waiver of any such provisions or the relinquishment of any such rights, but the same shall continue and remain in full force and effect.

20.17 Customer represents and warrants that there is no relationship, agreement, contract, or other arrangement currently in effect or scheduled to take effect whereupon Customer's entering into or performance of the Agreement would give rise to a claim by any Person for wrongful termination, tortious interference, or any similar claim. In the event that such a claim is made by any Person, Customer will indemnify, defend and hold the Company and all other Indemnitees harmless from and against any and all Losses arising from or related to entering into or performing under the Agreement.

21. Termination

21.1 The Company shall have the right to terminate the Agreement by written notice to the Customer. The Company's obligation under the Agreement shall end and terminate in any event from the last day of service of such termination.

21.2 Notwithstanding anything herein to the contrary, the Company may at any time terminate the Agreement by written notice to the Customer, effective immediately if:

(i) the Customer commits a material breach of any of the terms of these Forwarding and Warehousing Conditions and such breach is not cured within thirty (30) days after the Customer being notified by the Company; or

(ii) the Customer goes into liquidation or is unable to pay its debts or commits an act of bankruptcy under the laws of its relevant jurisdiction of incorporation, or if a receiver is appointed over any of its assets; or

(ii) the Customer fails to pay the Fees payable to the Company as and when required by the terms of these Forwarding and Warehousing Conditions

213 In the event that the Customer terminates the Agreement unilaterally, the Company shall be entitled to a reasonable compensation for the loss it suffers as a result of the termination of the Agreement.

CHAPTER II FORWARDING CONDITIONS

Scope

Scope of Services covered by Forwarding Conditions includes but is not limited to arranging for transportation, delivery, loading, unloading, packing of the Goods, arranging for container, weighing, tallying, customs declaration/clearance, barging or any other disposal of Goods, pursuant to Agreement or as per written instruction of Customers.

22. Transportation

22.1 In all instances where the Company receives Goods for shipment or transport, Company shall be deemed to take the Goods as an authorized agent of the Customer and the Goods remain entirely at the risk and expense of the Customer and all costs shall be at the account of the Customer.

22.2 The Company is entitled, but not obliged, to examine or inspect or take any further action to check the Goods which are landed or discharged from any vessel, aircraft, vehicle, or transport unit.

22.3 The Company shall not be liable to the Customer for any Losses whatsoever if the carriers refuse to acknowledge the number or weight of the Goods that are forwarded by the Company as part of its Services.

22.4 The non-availability of a berthing or parking place or storage space, upon arrival of transport of the Company or the Customer, is considered to be a circumstance beyond the Company's control and no responsibility shall attach to the Company for failure to secure such place or space.

22.5 The Company is not responsible for any collection or holding of monies for the Customer or any third party's behalf in any event, including by way of example, monies due on delivery of Goods shipped on cash-on-delivery terms.

22A. Transportation by Barge

22A.1 Formation of Contract for Transportation by Barge. On or after the Company's written acceptance of an order or instruction from the Customer for the transportation of Goods by barge, the contract between the Customer and the Company shall only come into effect on the date of the Company's execution of a contract of affreightment or similar contract with a third-party provider of barge transportation ("Carrier") or the issuance by the Company of a charter order or similar instrument under an existing master agreement with a Carrier, upon such terms and conditions as are acceptable to Company (in each case the "Carrier Contract"). The contract between the Company and the Customer shall incorporate these Forwarding and Warehousing Conditions. The Carrier Contract, together with these Forwarding and Warehousing Conditions, shall be deemed the "Agreement" as used in these Forwarding and Warehousing Conditions.

22A.2 Fees and Charges.

(a) The Company shall pay the Carrier for the transportation of the Goods in accordance with the Carrier Contract and the Company's contracts with the providers of other services reasonably required in connection with such transportation. The Fees invoiced by the Company to the Customer from time to time shall include, but shall not be limited to, all amounts owed by the Company to the Carrier and such other providers with respect to the Goods, including without limitation charges for hauling freight, fleeting, shifting, switching, ballasting, cleaning, disposing of excess Goods or other cargo, demurrage, drayage, elevation, loading, stowage or unloading of Goods, opening or closing barge covers, removal or replacement of barge covers, stacking or restacking of barge covers, tollage, sheddage, dockage, wharfage, switching tollage, any terminal expense at either origin or destination, and the costs of insurance required under the Carrier Contract to be obtained and maintained by the Company. Taxes and Other Payments (except taxes on net income of the Company) that are charged to and paid by the Company because of the Services rendered hereunder shall also be for the account of the Customer, including without limitation the Customer shall defend, indemnify, and hold the Company and all other Indemnitees harmless for any Losses arising any user charge, user fee or toll, any tax, or any wharfage, port, harbor, or dockage fee, that is imposed, levied or collected for the use of the inland waterway system including the intracoastal waterways, or of the locks, dams, ports, harbors or wharfs in such systems, or for fuel used in performing the Services, with such amount to be effective as of the effective date of any such Taxes and Other Payments.

(b) If the Carrier provides for a towboat or personnel to stand by for holding, shifting or switching of the barge before, during, or after loading or unloading, then all standby charges are for the Customer's account. If the Customer arranges for shifts to be made by a Person other than the Carrier or another party arranged by the Company, then the Customer assumes full, and sole, responsibility for the safety of the barge and the Goods during such shifts. In any such case, the Customer shall defend, indemnify, and hold the Company and all other Indemnitees harmless for any Losses arising during any such movements.

(c) Notwithstanding anything contained herein, in the event that the Customer fails to pay any of the above amounts owed by it and any of the Goods are damaged or degraded as a result, then the Customer shall release, defend, indemnify, and hold each Indemnitee harmless from any and all Losses related to damages to the Goods.

(d) The Customer shall reimburse the Company for all costs and expenses incurred in collecting any past due amounts from the Customer, including costs of arbitration, litigation and attorney fees and expenses.

22A.3 Additional Payment Conditions.

(a) Fees are earned on the initiation of loading of the Carrier's barge. No deduction shall be made to the Fees if the Goods are lost or damaged, in whole or in part, or if the voyage or movement is interrupted or abandoned. Within twenty-four (24) hours of completion of loading, the Customer shall provide the Company with the load weight, count and other information as the Company may reasonably request regarding the Goods, unless the Carrier has provided such information to the Company directly. Fees are calculated based on the reported weight loaded into the barge. If such information is not provided to the Company by either the Customer or the Carrier within twenty-four (24) hours of the completion of loading, then the Fees shall be calculated based on the weight associated with the maximum barge

draft as dictated by the Carrier pursuant to Clause 22A.4. The Company does not assume any responsibility for weighing the Goods at origin or at destination. If the Agreement includes a minimum weight amount, the Customer will be invoiced for such minimum load weight even if the draft allowed by the Carrier under Clause 22A.4 is not sufficient to load such minimum amount. Nothing contained herein shall render the Company responsible for the differences in the inturn weight and the outturn weight of the Goods from delivered and unloaded barges.

(b) The Company may invoice the Customer for the Fees at any time after completion of loading, it being understood and agreed that upon unloading, the entire amount of the Fees are deemed earned and due and payable to the Company, even if the barge or Goods are lost or damaged, in whole or in part, or if the voyage or movement is interrupted or abandoned. The Company reserves the right in its sole discretion to recalculate the Fees at any time based on actual weight and to issue a corrected invoice. Other charges, including but not limited to, demurrage and other amounts due under Clause 22A.2, will be invoiced upon completion of the move or from time to time, at Company's option.

(c) The Company reserves the right to charge a reasonable handling fee for Services provided by other vendors.

(d) In the event an invoice is not paid by the Customer when due, the Company may, at its option, suspend all Services and retain possession of Goods until all past due invoices are paid in full and/or require different payment terms for the balance of the Agreement including, but not limited to, entering into a Carrier Contract with respect to any Goods of the Customer.

22A.4 Loading and Unloading. Unless otherwise arranged by the Company with the Carrier or other third parties, the Customer agrees to arrange for or load, stow and unload the Goods to and from the barge in a safe and workmanlike manner and clean any debris spilled on the working surfaces of the barge. In no event shall the Company be liable for moisture or wet Goods due to torn wrappers, improperly sealed or closed barge covers, or any other damage to Goods caused, in whole or in part, by actions of the stevedore or any other Person while loading or unloading a barge. The Customer agrees that it shall comply with the Carrier's instructions regarding height of load, weight and distribution of Goods, draft of barge and such other instructions as the Carrier may deem desirable for safe transportation, including precautions for river or weather conditions. The Customer acknowledges that, if the Customer fails to follow the Carrier's instructions, or if the Goods or debris are left on the working surfaces (i.e., covers, decks, gunnels, etc.), then the Carrier, at its exclusive option, may refuse to accept the barge for transport and the Carrier may, at the Customer's expense, promptly redistribute the Goods and/or remove debris or otherwise comply with the Carrier's requirements. The Customer shall be liable for any costs associated with any failure to load in accordance with this Clause. Without limiting the foregoing, the Customer shall also pay demurrage charges during any detention or delay due to the Customer's failure to load in accordance with this Clause. The Customer acknowledges that the Carrier may also, at its option, dispose of excess Goods in order to reduce a barge's draft, which action shall be for the Customer's account at the Customer's expense with no recourse available against the Company for lost Goods. Unless otherwise arranged by the Company with the Carrier or other third parties, the Customer agrees to unload and remove the Goods from the Carrier's barge promptly upon arrival of the barge at its destination. The Company may sell or otherwise dispose of the Goods not unloaded and removed in accordance with the Agreement.

22A.5 Safe Berth and Wharfage; Possession of the Barge. Unless otherwise arranged by the Company with the Carrier or other third parties, the Customer shall provide safe loading and

unloading berths, shall provide watchman service at loading and unloading docks, and shall ensure that the barges are adequately moored with warning lights properly displayed as required by applicable Laws. Upon delivery of the Carrier's barge to the dock designated by the Customer or to an alternate location as provided by the Agreement, the Customer shall be deemed to be in possession of the barge and any Goods on board and responsible for their safety until the barge is released to and removed by the Carrier regardless of whether the Customer owns or operates the dock or alternate location. Barges and Goods in the Customer's possession under this provision shall be held without charge to the Company. Customer hereby agrees to waive and release the Company and the Carrier from any liability for claims based on bodily injury or death suffered or incurred by the Customer or its customers or consignees or its or their employees or contractors while the barge is in the Customer's possession, including without limitation, claims based on the negligence of the Carrier's barge, but specifically excluding the gross negligence or wilful misconduct of the Company, and the Customer specifically agrees not to pursue any legal action relating thereto, whether based upon *Fed. Marine Terminals, Inc. v. Burnside Shipping Co.*, 394 U.S. 404 (1969), 33 U.S.C. § 905(b) via assignment, or otherwise.

22A.6 Equipment Tender and Acceptance. The Company will arrange for the Carrier to tender barges and, unless otherwise arranged by the Company with the Carrier or other third parties, the Customer or its designee will inspect each barge and will not permit loading unless the barge is suitable for the Goods to be shipped. Commencement of loading shall constitute the Customer's acceptance of (a) all the terms and conditions of the Agreement, including these Forwarding and Warehousing Conditions, and (b) the barge as clean and suitable for the Goods. The Customer will immediately notify the Company in writing if the Customer reasonably determines a barge is unsuitable. Such notification will include the reason such barge is unsuitable. The Company will make reasonable efforts to make such barge suitable or provide an alternate barge at no cost to the Customer. If a reasonably suitable barge is not provided to the Customer, the Customer may arrange alternative transportation for the particular delivery requested by the Customer at the sole cost of the Customer, without any liability to the Company.

22A.7 Equipment Cleaning. If a barge that is returned to the Carrier contains excess Goods or debris or if it requires cleaning beyond what is ordinary and customary, as determined by the Carrier, then the Customer shall pay the full cost of such removal and cleaning, transportation to and from appropriate cleaning facilities, and any other costs and fees. The Customer shall also pay demurrage at the rate set forth in the Carrier Contract for all time that the barge is at the cleaning facility. The Customer shall retain sole ownership of any Goods or debris except to the extent that ownership is transferred to any barge cleaning facility. All Goods remaining in the barge following unloading shall be deemed abandoned. If any of the Goods or debris are spilled or deposited on the exterior of the barge (including working surfaces, such as gunnels, covers, or decks) at either loading or unloading points, the Customer is responsible for all costs associated with cleaning the exterior of the barge. The Carrier may refuse to pick up or move a barge if Goods are left in the barge or if debris is left or spilled on the barge if, in the Carrier's sole discretion, the Goods or debris present a safety or health hazard to any Person who may come in contact with the barge.

22A.8 Movement of Goods. The Customer acknowledges that barges shall move only at the convenience of the Carrier, either as a single unit or with one or more other barge units. The Customer acknowledges that the Carrier is not bound to transport the Goods by any particular towing vessel or in time for any particular market or otherwise than with reasonable dispatch.

It is understood and agreed that Company does not make any representation or warranty as to the time that will elapse between acceptance of the Agreement until placement at origin, nor between departure of the barge from origin and arrival of the barge at destination. The Customer acknowledges and agrees that the Company shall not be liable to the Customer or any other Person as a result of any such delay.

22A.9 Terms of the Carrier Contract. The Customer acknowledges that the Carrier Contract may give the Carrier the right to shift or interchange the tow from one to another towing vessel, to transfer the Goods from the barge into which the Goods were originally loaded to one or more other barges, to tie off the tow at any point and for any purpose, to deviate from its normal route and to call at any port, whether or not on said route, in any order, and to delay movement of barges while in transit. During river closures or periods of restricted movement, the Company shall provide Services as it deems appropriate under the circumstances consistent with the terms of the Carrier Contract with respect to the loading, unloading, releasing, fleeting, demurrage and other aspects of barge movement, and the Customer shall pay any additional expenses necessary to allow barges to transit the affected areas to their intended destination or demurrage, until normal operations resume. The Customer acknowledges that the terms of the Carrier Contract shall govern situations in which the port or other point to which Goods are to be delivered becomes inaccessible because of a condition that adversely affects the navigability of a waterway to be traversed between origin and destination. The Customer acknowledges that the terms of the Carrier Contract shall govern the effect on the Carrier's obligations and any additional payments due to it arising from any changes in Laws that increase the Carrier's operating costs or ability to perform under the Carrier Contract, including without limitation new or increased equipment requirements, compliance with Department of Homeland Security requirements, environmental or manning Laws, or any interventionary action on the part of a governmental agency or bureau having jurisdiction. The Customer agrees to pay any additional costs and expenses incurred by the Company under the Carrier Contract as a result thereof.

22A.10 Re-consignment and Stop-Off. Prior to or while barges are in transit, the Customer, with the Company's consent, which consent may be withheld for any reason, and upon acceptance of the Company's re-consignment fee, may re-consign, divert, hold a barge in transit to await orders, and/or stop-off barges to a destination not provided for in the Agreement, to the extent that such re-consignment, diversion or stop-off is permitted by the Carrier Contract. In the event of such re-consignment, diversion, hold and/or stop off, the Customer shall remain fully liable to the Company for all of its duties and obligations under the Agreement, including but not limited to payment for affreightment, re-consignment and/or stop-off fees and demurrage in accordance with terms of the Carrier Contract.

22A.11 Description of Goods; Pollution.

(a) The Customer at its sole cost and expense shall obtain and provide all certificates, permits, surveys, inspection reports and all other documents required under applicable federal regulations to lawfully load, carry, transport and discharge the Goods. The Customer represents and warrants that the Goods will be as described in the Agreement. The Customer has provided to the Company, or shall provide to the Company reasonably in advance of loading, the generic name of the Goods to be transported pursuant to the Agreement and the Material Safety Data Sheets ("MSDS") for the tendered Goods. The Customer represents and warrants that the Goods will be consistent with the MSDS provided. In addition, the Customer shall notify the Company of the classification of the Goods under all applicable

Laws. The Company has the right in its sole and absolute discretion to refuse to carry any Goods tendered for transportation if such Goods were not previously identified or if they are inconsistent with the provided MSDS. In the event a discharge of Goods occurs that results in, or threatens to cause, pollution damage (without regard to whether or not the discharge was caused by a negligent act or omission by the vessel, the Carrier or the Company), the Company and the Carrier are each authorized to promptly take whatever measures are reasonably necessary to prevent or mitigate the damage, which measures and actions shall be at Customer's sole cost and expense, unless caused by the Carrier's negligence. The Customer is prohibited from loading, shipping or transporting aboard the Carrier's equipment any "perishable cargo" or "hazardous cargo" or "hazardous materials or substances" as such terms are defined by applicable Laws. The Customer represents and warrants that the Goods do not constitute "perishable cargo" or "hazardous cargo" or contain "hazardous materials or substances".

(b) If the Customer fails to disclose all necessary information about the Goods or provides an incomplete or improper description of the Goods, and in either case, an Indemnitee suffers any Losses as a result, the Customer shall indemnify, defend and hold each Indemnitee harmless from and against all such Losses. In no event shall the Company be responsible or liable for any heat condition or combustion of any Goods, or any effects thereof, or any alleged failure to discover the same. If any of the Goods combust while the same are on a barge, the Customer shall indemnify, defend and hold each Indemnitee harmless from and against any and all Losses, including by way of example, Losses to the barge.

22A.12 Force Majeure. The occurrence of a Force Majeure Event does not excuse payment of demurrage for a barge which is on demurrage status at the time of the declaration, and demurrage shall continue to accrue on such barge until released to the Carrier after the cessation of the Force Majeure Event. The Customer acknowledges that the terms of the Carrier Contract shall govern the effect of any Force Majeure Event on the freetime provided under the Carrier Contract. The provisions of this Clause are not intended and shall not be construed to affect Customer's responsibility for loss of or damage to a barge in its possession.

22A.13 Cargo Risk. The Agreement is for the private carriage of cargo. The Customer hereby acknowledges that the Company does not provide cargo insurance. The Customer shall, at its sole cost and expense, procure third party cargo insurance. The Company shall be liable only for any loss or damage to the Goods to the extent caused by the sole negligence or wilful misconduct of the Company. Whether any such loss or damage due to the Company's sole negligence, wilful misconduct or otherwise, in no case shall the Company be liable beyond the lowest of (i) \$100,000.00, (ii) the actual value of the Goods lost or damaged, or (iii) the reasonable cost of repair or reconditioning of the Goods. In no event shall the Company be liable for loss of, damage to, or expense in connection with, the Goods arising prior to the Customer's acceptance of the Carrier's barge at origin as provided in Clause 22A.6 or arising after the barge has been actually or constructively placed at destination. To the extent that the Customer has cargo insurance, the Customer on behalf of itself and its insurers, hereby waives subrogation against the Company and the Carrier for any and all loss or damage to the Goods. In no event shall the Company be liable for loss or damage (including, without limitation, rust, oxidation and corrosion) caused, in whole or in part, by condensation in the barge, which the Customer hereby acknowledges is a risk inherent in barge transportation.

22A.14 Third party costs. In the event the costs incurred by the Company for any third-party services required to complete the transportation of the Goods are increased by any such third-party facility owner or service provider through the application of an unanticipated, extraordinary surcharge, and such surcharge is not otherwise fully reimbursable to the Company under another provision of these Forwarding and Warehousing Conditions, the Company shall invoice the Customer monthly for that portion of such surcharge-based increase that is reasonably attributable to the Services performed for the Customer. For avoidance of doubt, “surcharge” as used in this Clause shall include any reasonably unanticipated rate or cost increase levied or passed through or by any third-party service provider whose services are necessary to complete the transportation of the Goods under the Agreement.

22A.15 Cargo Claims. All Disputes regarding Goods and/or damage to a dock must be filed with the Company in writing within the time period set forth in the Agreement. Any bill of lading or other shipping document issued in connection with transportation of Goods under the Agreement shall be considered acknowledgment of receipt only.

22A.16 Governing Law. With respect to forwarding by barge, the Agreement shall be governed by the maritime Laws of the United States of America, and if the maritime laws are not applicable to a specific matter under this Clause 22A, shall be governed by the laws of the State of New York and all disputes that arise hereunder or under the Agreement shall be resolved in accordance with the Laws of the State of New York.

22A.17 Conflict; Order of Precedence. In the event of any conflict or inconsistency between the terms and conditions of this Clause 22A and the other provisions of these Forwarding and Warehousing Conditions, this Clause 22A shall govern and control. In the event of any conflict or inconsistency between the terms of these Forwarding and Warehousing Conditions, including this Clause 22A, and the terms and conditions of any Carrier Contract with respect to the obligations and liabilities of the Company, the terms and conditions of the Carrier Contract shall govern and control, and the Customer shall defend, indemnify, and hold the Company and all other Indemnitees harmless for any Losses arising therefrom.

23. Delivery/Loading/Unloading

23.1 A statement by the Customer as to the time of delivery of the Goods will not be binding on the Company, it being understood and agreed that the Company does not guarantee the arrival time of the Goods but shall arrange at its sole discretion at rate of speed at which Goods shall be delivered.

23.2 In the event that the loading and/or unloading time under any bill of lading and/or charter party in respect of the Goods is inadequate regardless of the cause thereof, all costs resulting therefrom, including without limited to any demurrage charges shall be borne by the Customer, notwithstanding that the Company was the party that accepted or entered into the bill of lading and/or charter party from which such aforesaid costs arise.

23.3 Any additional expenses of an exceptional nature, including without limited to any higher wages arising from the loading and/or unloading of the Goods outside the Working

Hours shall not be included in the Fees unless specifically stipulated in writing and agreed to by the Company, and all such expenses will be borne by the Customer.

234 Unless otherwise stipulated in writing and agreed to by the Company, the following expenses shall be charged to the Customer and shall be payable by the Customer and are not included in the Fees: postage expenses, facsimile, teleprinter, telegram and telephone charges, stamp fees, import duties and excise, statistical duties, consular and attestation fees, customs formalities, costs of preparing shipping documents and obtaining bankers' guarantees (if any), cost of weighing, measuring, tallying, taring, sampling and repairing, bundling or rebundling, packing or repacking, crantage, additional costs of handling heavy objects, insurance premiums, all extra costs such as warehousing charges and quayside charges or wharfage charges for consignments missing a connection, demurrage for detention or delay of vessels, trucks or other transport, hire of tarpaulins, overtime pay, the cost of working outside the Working Hours, cost of providing watchmen and all other out-of-pocket expenses whatsoever. The Company shall issue a separate invoice in respect of such aforesaid expenses, fees, duties whatsoever and the Customer shall pay all such expenses, fees, duties whatsoever to the Company within fourteen (14) days of its receipt of the invoice by the Company.

235 Unless otherwise agreed to by the Company in writing, the Customer shall pay to the Company immediately all freight, duties, and all other costs and expenses relating to the transportation of the Goods and/or customs requirements upon arrival or dispatch of the Goods which are being received or forwarded by the Company respectively. Any risk of currency exchange fluctuations shall be borne by the Customer.

236 Where the Goods are accepted or dealt with upon instructions to collect freight, duties, charges or other expenses from the consignee of the Goods or any other Person, the Customer shall remain liable for the same if the relevant charges are not paid by such consignee or other Person on the due date for payment or upon demand by the Company.

237 The Company shall not be obliged to furnish or advance any deposit or guarantee for monies which the Customer is responsible, including but not limited to, for the payment of any freight, duties and/or other costs and expenses relating to the Goods in the event the same is required by the relevant authority or party. In the event that the Company furnishes security out of its own resources, the Customer shall make payment to the Company of the amount for which security has been furnished immediately upon demand by the Company. Any and all consequences arising from the failure to comply with a demand to furnish such security shall be borne by the Customer.

238 Without prejudice to the generality of the other provisions in the Forwarding Conditions, the Company shall not be liable for:

- (a) any errors in the particulars relating to the freight, duties and any other costs and expenses relating to the Goods which are stated to be payable and which are notified to the Company by third parties;
- (b) any errors in the amount of freight, duties and any other costs and expenses which are charged to the Customer. In this regard, any demand for payment of the shortfall of any such freight, duties and any other costs and expenses shall be charged to and be payable by the Customer;

- (c) any consequences arising from the refusal by any carrier to sign for the number of pieces or items, weight, or any other particulars relating to the Goods;
- (d) any error in the particulars of the Goods as stated in any warrants, receipts, delivery orders, confirmations, release instructions or any other similar documents notwithstanding that such error is due to the want of care or negligence on the part of the Customer's employees;
- (e) any loss, damage or expense whatsoever suffered or incurred by the Customer as a result of or in any way due to any difference between the time in New York or other applicable domicile and in any other parts of the world where the Customer is located. The Company shall not be obliged to provide or perform any Services outside the Working Hours.

239 Where the Company carries out the transportation of the Goods, its obligations shall be governed by these Forwarding and Warehousing Conditions and not by any other agreements or Laws whatsoever that may be applicable to a carrier.

23.10 Except as herein provided, the Company shall not be liable for any matters whatsoever and however arising, whether in respect of or in connection with the Goods, the Services, any instructions, business, advice, information or otherwise. Advice and information, in whatever form it may be given, are provided by the Company for the Customer only and the Customer shall defend, indemnify and hold harmless the Company and all other Indemnitees for any and all Losses arising out of any other Person relying on such advice or information.

24. Warehousing/Storage/Packing of the Goods/Containers

24.1 The Company may warehouse or store the Goods at any place at the sole discretion of the Company pending the forwarding or delivery of the Goods, and all expenses incurred in the warehousing or storage of the Goods shall be payable by the Customer.

24.2 Except where the Company is instructed in writing to pack the Goods, the Customer represents and warrants that all the Goods have been properly and sufficiently packed and the Company shall not be liable for any loss, damage or expenses incurred or suffered by the Customer as a result of the flawed, faulty, improper and/or insufficient packing of the Goods.

24.3 If a container has not been packed or stuffed by the Company, the Company will not be liable for loss of or damage to the contents thereof if caused by:

- (a) the manner in which the Container has been packed or stuffed;
- (b) the unsuitability of the contents for transportation in containers;
- (c) the unsuitability or defective condition of the container, or arose as a result of the peculiarity of the Goods; or
- (d) the Container not being properly sealed at the commencement of any transportation.

24.4 Where the Company is instructed to provide a container and such instructions are accepted by the Company, as evidenced in writing or by the Company's shipment of the Goods in a container, the Company is not under an obligation to provide a container of any particular type or quality.

245 The Customer represents and warrants that it has complied with all Laws relating to the nature, condition, packing, handling, storage and transportation of the Goods.

25. Tallying/Weighing/Measuring of the Goods

25.1 All operations such as superintending, sampling, taring, tallying, weighing, measuring, etc., and receiving the Goods under judicial survey, will be undertaken only on the Customer's specific instructions and all costs thereof and relating thereto will be payable by the Customer and, if first paid by the Company, will be reimbursed to the Company by the Customer forthwith upon demand.

25.2 Notwithstanding Clause 25.1 above, the Company will be entitled, but not obliged, and the Customer hereby authorizes the Company to take any action with respect to the Goods that the Company considers to be necessary in the Customer's interest, at the Customer's expense and risk.

26. Sale or Disposal of Goods

26.1 Any Goods which are perishable 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 and payment or tender of the net proceeds of any sale of such perishable Goods after deduction of any charges and expenses due to the Company shall be equivalent to delivery of such perishable Goods. All charges and expenses arising in connection with the storage, sale or disposal of such perishable Goods shall be borne by the Customer.

26.2 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 Customer or the consignee of the Goods or for any other reason, upon giving 14 days' notice in writing to the Customer. For the avoidance of doubt, the aforesaid 14 days' notice in writing shall not apply in respect of perishable Goods and the Company shall be entitled to exercise such rights of sale at any time at the Company's sole and absolute discretion. All charges and expenses arising in connection with the storage, sale or disposal of the Goods shall be borne by the Customer.

CHAPTER III

WAREHOUSING CONDITIONS

Scope

Scope of services covered by Warehousing Conditions includes but is not limited to issuance of Warehouse Receipt, storage, release of Goods pursuant to Agreement or as per written instruction of Customers.

27. Warehouse Receipt & Release of Goods

27.1 There shall only be one original Warehouse Receipt issued by the Company. A valid Warehouse Receipt shall only be signed by an authorized signatory of the Company. The Company shall not be liable for any losses whatsoever arising out of any unauthorized use of the Warehouse Receipt.

27.2 Any copy, photocopy or scanned copy of a Warehouse Receipt shall not have any legal force or binding effect with regard to the entitlement of Goods under any Warehouse Receipt. Any amendment, erasure and/or any form of tampering with any Warehouse Receipt shall render such Warehouse Receipt null and void.

27.3 Upon receipt of the Goods by the Company, the Company may issue a Warehouse Receipt to the Customer as per written instruction of the Customer. The Company shall be entitled to refuse such issuance if the Customer has not paid all monies due and owing to the Company, or there appear to be other grounds for the refusal.

27.4 Transfer of the Goods or part thereof by the Customer to a third party shall not be recognized by the Company unless all moneys owing by the Customer to the Company and all claims which the Company may have against the Customer shall have been paid and/or settled. Until and unless a new agreement has been made between the Company and such third party otherwise, the Agreement with the original Customer in respect of the Goods or part thereof which is transferred shall always remain applicable.

27.5 Warehouse Receipt is not and shall not be construed to be document of title. The Company will not recognize any other party as a party entitled to the Goods by reason of any mode of transfer and/or endorsement on the Warehouse Receipt.

27.6 The Company shall only proceed with any Release as per written instruction of Customer unless and until the original Warehouse Receipt is delivered to the Company and provided the Customer has fully settled all the Fees and/or any other applicable payment which is due and payable to the Company.

27.7 Should the Customer wish to make a partial release, the Warehouse Receipt is no longer valid, transferable or endorsable and the original Warehouse Receipt must be returned to the Company for cancellation and to proceed with the partial release instruction, and a new Warehouse Receipt shall be issued as per written instruction of the Customer, for the remaining Goods.

278 If a Warehouse Receipt is lost, damaged or destroyed, the Person entitled to it may apply to the Company for either a nullification of the Warehouse Receipt or issuance of a new Warehouse Receipt; where such application must set out in full cause of the loss (including where applicable, enclosing a copy of the police report in relation to such loss) or damage/destruction, and the ground on which the applicant proves his entitlement over the Goods. The Company may demand a letter of indemnity and/or impose such other requirements at the absolute discretion of the Company, and to decide whether to reissue such Warehouse Receipt.

28. Instructions, Tenders, etc.

28.1 All agreements, tenders, instructions relating to the Services shall be recorded in writing. Verbal or telephonic communications shall be binding on the Company only if such communication is immediately followed by a written confirmation. Only the Company may plead the absence of a written confirmation.

28.2 All tendering of the Goods and instructions regarding storage, custody and handling of the Goods and arrangement related thereto must be accompanied by a statement of the description, value, number of packages and gross weight of the Goods and all other particulars, including such terms, which if the Company had been aware of, the Company would not or might not have entered into the Agreement or would or might have entered into the Agreement on different terms and conditions. The Customer shall separately state the weight of any package which exceeds 1000 kilograms.

29. Accuracy of Description of the Goods and Quality of the Goods

29.1 The Customer shall ensure that all instructions, information and documents in relation to the Goods as required to be provided to the Company are accurate and adequate and are promptly provided to the Company as and when required by the Company. The Customer represents and warrants and is bound by the accuracy of all descriptions, particulars and/or information furnished to the Company in respect of the Goods. The Customer shall be liable to the Company and/or any third parties for any injury, loss or damage arising from the incorrect and/or misleading and/or incomplete description, particulars, indication or information in respect of the Goods including but not limited to inaccuracies or omissions in the leading marks, numbers, quantity, weight, gauge, measurement, contents, nature, quality or value of the Goods as well as for any damage arising from defects in the Goods and/or packing, which have not been notified to the Company before the parties enter into an Agreement.

29.2 The description and/or specification and/or particulars of the Goods and/or in respect of the packages as stated on the face of any Warehouse Receipt, delivery order and/or release instructions shall be treated as the description, specifications and/or particulars provided by the Customer. The Company is not liable for the correctness or accuracy of such description, specification and/or particulars or admit the existence, good order and condition of the Goods described therein, or of the contents of any package or other shipping unit. The Company shall be entitled to rely on such particulars as to the contents, measurements, nature, quality, weight, number, serial numbers, marks, value in respect of the Goods, even if the Goods should have been counted, weighed or measured in the presence of any of the Company's agents or servants.

30. Weighing / Measuring of the Goods

30.1 The Company shall not be obliged to weigh or measure the Goods in storage if no instructions to carry out weighing or measurement of the Goods are given to, and accepted by, the Company, as evidenced in writing or by performance. Notwithstanding the foregoing, the Company shall be at liberty to effect weighing and/or measurement of the Goods in order to ascertain whether the weight and/or measurement of the Goods comply with the specifications of the Goods received from the Customer. In the event that the weight and/or measurement of the Goods determined by the Company differ from those specified by the Customer, the cost of carrying out the weighing and/or measurement of the Goods by the Company shall be borne by the Customer.

30.2 Packages may be opened for examination of the contents thereof at the Customer's request only, but the Company shall at all times be entitled, but not obliged, to do so if it suspects that the contents have been wrongly described by the Customer. Should the examination reveal that the contents differ from those described, the cost of the examination shall be borne by the Customer.

31. Delivery of the Goods to Company

31.1 Delivery to and receipt by the Company of the Goods shall be effected by the Customer handing over the Goods to the Company and the Company taking over the Goods at the place of storage.

31.2 Unless otherwise stated, the Customer represents and warrants that the Goods shall be in good condition, and if packed, be properly packed when delivered to the Company. If the Goods appear to be in a damaged or defective condition upon delivery to the Company, the Company shall be entitled but not obliged to take such steps as may be necessary to protect the Customer's interest against the carrier or any other party at the Customer's sole risk and expense. The Customer shall not be entitled to question the manner in which the Company has carried out such steps as aforesaid to protect the Customer's interest. The Company shall immediately notify the Customer of any action taken, but failure to notify the Customer shall not give the Customer any right of claim against the Company.

32. Commencement of Services and Speed of carrying out the Services

32.1 Unless otherwise agreed upon or unless prevented by special circumstances, the Company shall commence executing accepted orders for storage or delivery of the Goods, if possible, not later than the Business Day following the day on which it has accepted the order or on which it has received the necessary documents (including but not limited to bills of lading, delivery orders, official documents), whichever is later. If the necessary orders are accepted and/or the necessary documents are received after 4:00p.m. New York time or applicable local time, the next Business Day will count as the day of acceptance of such orders and/or receipt of such documents. As used herein, "Business Day" means any day on which banks in New York are not authorized to close.

32.2 The Company shall determine the rate of speed at which orders for storage or delivery of Goods shall be executed. The Company will as much as possible pay regard to the instructions of the Customer in this respect, but shall not be liable for any expenses, loss or damage incurred or suffered for and on behalf of or by the Customer should the rate of speed at which the order is executed be slower than that requested by the Customer.

33. Times for Delivery and Collections of the Goods

33.1 Goods shall be delivered to and collected from the place of storage during the Working Hours and the Company shall not be obliged to provide or perform any Services outside the Working Hours. If the Customer requires any Services to be executed outside the Working Hours, the Company shall be at liberty to decide whether to do so or not. The Customer shall bear any extra charges which may be incurred as may be notified by the Company for any Services provided outside the Working Hours.

33.2 In the event that the Customer instructs the Company that Goods for storage in a certain quantity will be delivered to the Company at a certain time, or that Goods for re-delivery in a certain quantity will be collected at a certain time and the Company arranges for labor and equipment to carry out such instructions of the Customer, the Customer shall reimburse the Company for any and all costs and expenses incurred by the Company if the Customer fails to deliver or collect the Goods or any part thereof or fails to deliver or collect the Goods or part thereof at the time stipulated by the Customer.

34. Place of Storage of the Goods

34.1 Unless otherwise agreed upon in writing by the Company, the Company shall be at liberty to decide where the Goods are stored. The Company shall at any time be entitled to transfer the Goods to another storage place. The cost of any transfer and the risk of such transfer shall be borne by the Company, unless the transfer has been effected by the Company in its sole discretion in the interest of protecting the Goods, or by reason of circumstances beyond the Company's control in which case, whereby such transfer shall be effected at the sole and absolute discretion of the Company and at the sole risk and expense of the Customer. The Company shall notify the Customer of any transfer of the Goods to any other storage place, but failure to notify the Customer shall not give the latter any right of claim against the Company.

35. Liability for Loss of or Damage to the Goods

35.1 The Company shall not be liable for any loss, damage and/or deterioration of the Goods unless such loss, damage or deterioration is proven to have been caused by the deliberate intent on the part of any employee of the Company. In any event, the Company shall not be liable for any loss, damage and/or deterioration of the Goods, in the following cases:

- (i) any damage and/or loss through theft or burglary;
- (ii) any loss, damage and/or deterioration of any Goods stored in the open, or which can only be stored in the open, or which the Company customarily stores in the open;

(iii) any loss, damage and/or deterioration occurring while the Goods are in the custody of the Company or occurring before receipt by the Company of the Goods and due to the following causes, regardless of their origin:

the natural quality of the Goods, changes in quality or character, inherent vice, decay, drying out, powdering, heat, heating, melting, staining, sweating, fermenting, freezing, rusting, mildew, mold, dampness, dust, oil, discoloration, evaporation, smells or stains from or contact with other goods or fuel, putrefaction, water of any kind, rain or spray, effects of climate, drainage, leakage, wastage, loss of weight, breakage, splitting, bending, chaffing, shrinkage, hook holes, rats, mice, insects and other vermin, explosion of any of the Goods whether received with or without disclosure of its nature, insufficiency, soiling, injury to, distortion, pressing or bursting of packages, adherence or coverings, failure to protect the Goods or inaccuracy, obliteration or errors in or insufficiency or absence of marks, numbers, address or description of the Goods;

(iv) all other causes which are beyond the control of the Company.

36. Admittance to place of storage

36.1 Provided prior written notice is given to the Company, the Company shall admit the Customer and/or any Persons authorized by the Customer to the place of storage of the Goods, subject to the compliance by the Customer or by such Person(s) authorized by the Customer with all formalities prescribed by the relevant authorities and subject to all conditions as stated in Clause 36.2 below.

36.2 The following conditions shall be applicable to Persons granted admittance to the place of storage by the Company:

(a) all Persons visiting the place of storage including the personnel of vessels and vehicles reporting to the warehouse, shall observe and fully comply with the Company's regulations;

(b) admittance shall be granted only during the Working Hours and with the attendance of the Company's employees;

(c) all expenses incurred in relation to visit shall be paid to the Company by the Customer;

(d) upon the occurrence of any Force Majeure Event as provided in Clause 14 above, the duty of the Company under Clause 36.1 shall be suspended;

(e) the Customer shall be liable for any damage caused directly or indirectly by any Persons who are granted admittance to the place of storage including but not limited to any damage caused to the place of storage, the Goods and/or other goods stored at the place of storage.

37. Services

37.1 The Company shall carry out such Services in respect of the Goods as may be required by the Customer that are accepted by the Company, as evidenced in writing or by performance, such as sampling, handling, servicing, packing, re-packing, bundling, re-bundling, piling, re-piling, lotting, weighing, etc., as well as re-delivery of the Goods at the Fees and arranging of the aforementioned as agreed to and based on the Warehousing Conditions. Any other work which the Company does not wish to undertake may, after the prior approval of the Company, be executed by or on behalf of the Customer, subject to any conditions which may be laid down by the Company, under the supervision of the Company and Customer shall pay any and all costs and expenses incurred by the Company. The Company shall not be liable for any loss, damage or expenses incurred or suffered by the Customer in carrying out such work.

37.2 Notwithstanding any other provisions of the Warehousing Conditions, the Company shall be entitled, without providing any reasons whatsoever, to refuse to accept any instructions which may be given by the Customer in relation to the provision of the Services.

38 Hazardous and other Goods

38.1 The Customer shall notify the Company in writing before delivery to the Company of any Goods of an explosive, flammable, corrosive, noxious or dangerous nature or any Goods which may possibly cause damage or be detrimental to the warehouse or to other goods stored in the warehouse, or which are classified as dangerous or hazardous goods by any Laws. The packages containing such Goods shall be clearly and indelibly marked to show the hazardous nature of their contents and the Customer shall indemnify the Company from and against any and all Losses suffered or incurred by the Company or any other Indemnitee by reason of the Customer's failure to so declare and mark the nature of such Goods. The attention of the Customer is directed to the Laws imposing criminal or civil penalties for failure to properly declare, mark and package such Goods.

38.2 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 Customer shall be liable for all expenses, loss or damage whatsoever caused by or to or in connection with the Goods however arising and the Customer shall indemnify the Company and all other Indemnitees from and against any and all Losses whatsoever arising in connection therewith, and the Goods may be destroyed or otherwise dealt with at the Customer's risk and expense at the sole discretion of the Company or any other Person in whose custody they may be at the relevant time if it is feared that failure to take such action might cause loss and/or damage to the Goods themselves, to other goods, to the warehouse or equipment or may cause harm or injury to any Person. If such Goods are accepted under arrangement previously made in writing between the parties, they may nevertheless be destroyed or otherwise dealt with on account of risk to other goods, property, life or health.

383 The expression “goods likely to cause damage” includes goods likely to harbor or encourage vermin or other pests. The Company shall immediately notify the Customer of the measures taken, but failure to notify the Customer shall not give the latter any right of claim against the Company. Without prejudice to the provisions of the preceding paragraph, the Customer shall indemnify the Company and all other Indemnitees from and against any claims of third parties for Losses arising as a result of damage caused by the Goods to goods of third parties.

384 The Company shall not be liable to Customer or any other Person whatsoever, or have any obligation to reimburse Customer or any other Persons, for any loss or damage to the Goods occurring at any time by reason or by means of fire.

39. Damage or Destruction of the Goods

39.1 If in the event of damage to the Goods while the Goods are in the custody of the Company, whether resulting from any of the causes set forth in Clause 35.1 hereof or other causes which are covered by insurance, regardless of whether the insurance was effected through the Company or not, and the assistance of the Company for assessment of the damage is desirable or necessary, such assistance shall be rendered by the Company at its sole and absolute discretion and Customer shall pay the Company any and all costs and expenses incurred by the Company and such remuneration to be fixed by the Company for its assistance and services. The Company may make such assistance conditional upon payment of all amounts that are due to the Company by the Customer.

39.2 In the event that the Goods are destroyed while the Goods are in the custody of the Company whether resulting from any of the causes set forth in Clause 35.1 hereof or otherwise, the date of destruction of the Goods shall count as the date of delivery to the Customer and the Fee, including warehouse rent plus any increases therein and any other applicable costs, charged in full months, together with insurance premium and cost (if the Goods are insured through the Company), plus any increases therein, shall be calculated up to and including the date of destruction and shall be due and payable forthwith by the Customer.

40. Removal of the Goods

40.1 Upon payment of all sums whatsoever owing to the Company and subject to the provisions of the Forwarding and Warehousing Conditions, the Customer may at any time remove the Goods from the custody of the Company. The Fee, including warehouse rent plus any increases therein and any other applicable costs, and, if the Goods have been insured through the Company, the insurance premium and cost plus any increases therein shall always be charged on the basis of full months and part of a month shall count for a full month.

40.2 Notwithstanding the aforesaid, the Company shall have the right, at any time, to require the removal of the Goods received for storage prior to the expiration of the storage period as agreed, without having to provide the Customer any period of notice, if in the discretion of the Company there is an urgent reason to do so. An urgent reason shall, inter alia, be deemed to exist if:

(a) the Customer fails to comply with one or more provisions of the Warehousing Conditions;

(b) it appears that due to the presence of the Goods, loss and/or damage to other goods, to the storage place or to equipment or harm or injury to Person(s) is to be feared;

(c) if the Goods are perishable or liable to inherent changes which in the Company's opinion would result in a decrease in value of the Goods and the Customer has failed to provide instructions for the prevention of such events.

403 The Customer shall remain liable for payment of the Fee, including warehouse rent plus any increases therein up to and including the date of the removal of the Goods.

41. Fees, Rates and Payment Terms

41.1 The Fees including warehouse rent plus increases therein, if any, and all other amounts due and owing to the Company by the Customer on any account whatsoever, including but not limited to insurance premium and cost plus increases therein if any (if the Goods have been insured through the Company), rent, disbursements, remunerations for storage and delivery, outlays and charges for work done or to be done, the cost of any clearance work and the like during or after a fire and all extra-ordinary expenses, extra wages whatsoever will be payable by the Customer within fourteen (14) days from the date of invoice for such amounts by the Customer or upon demand by the Company.

41.2 The Fees and all other applicable costs and all verbal or written agreements between the Company and the Customer regarding rates and remunerations for work will be based on the wages and charges imposed by the relevant authorities (where applicable) on the services rendered by the Company in force at the time the Agreement was concluded. In the event that there is an increase in the said wages and charges imposed by such authorities, the rates and remunerations which have been agreed upon will be adjusted accordingly and become effective immediately.

41.3 Unless otherwise expressly agreed upon, the agreed rates for storage will be based on the customary method of stacking the Goods. If at the Customer's request, or owing to the condition of the Goods, the customary method is departed from, and increase in the rates will be effected in proportion to the additional floor space occupied as compared with that for the normal stacking of the Goods.

41.4 All payments by the Customer will be made without any deduction, discount or rebate whatsoever and payment shall not be withheld or deferred on account of any claim, counterclaim or offset.

42. Sale or Disposal of the Goods

42.1 Without prejudice to the provisions of Clause 40 "Removal of the Goods" of the Warehousing Conditions hereof, the Company shall be entitled to sell the Goods:

(a) if the Customer fails to remove the Goods given to the Company for storage when requested by the Company to do so;

(b) if the Customer fails to pay any amount owed by it to the Company, without prejudice to the Company's right to satisfy its lien.

422 The Company shall be entitled to sell or dispose of all non-perishable Goods upon giving 14 days' notice in writing to the Customer. The aforesaid 14 days' notice in writing shall not apply in respect of perishable Goods and the Company shall be entitled to exercise such rights of sale at any time at the Company's sole and absolute discretion. The sale shall be effected by auction or private contract or otherwise at the sole and absolute discretion of the Company. Customer acknowledges and agrees that the notice provided for herein is commercially reasonable within the meaning of any applicable Law, including by way of example, but not of limitation, the New York Uniform Commercial Code.

423 All expenses connected with the sale and any other amounts owed by the Customer to the Company shall be recoverable from the proceeds of sale of the Goods.