

Definitions

1 In these Conditions:-

- (a) **Authority** is any duly constituted legal or administrative person, acting within its legal powers and exercising jurisdiction within any nation, state, municipality, port or airport.
- (b) **Company** is Damco Distribution Services Inc.
- (c) **Container** includes, unless otherwise indicated, any vehicle, container, flat, pallet, trailer, transportable tank and similar items used for the consolidation of goods as well as mobile plant and timber packages.
- (d) **Customer** means any person, whether themselves an agent or a principal, at whose request or on whose behalf the Company provides a service.
- (e) **Dangerous Goods** includes goods that are or may become of a dangerous, inflammable, radio-active or damaging nature, goods liable to taint or affect other goods and goods likely to harbour or encourage vermin or other pests.
- (f) **Goods** includes the cargo and any container not supplied by or on behalf of the Company, in respect of which the Company provides a service.
- (g) **Goods of High Value** includes bullion, precious stones, bank notes or coins, bonds, negotiable instruments or securities of any kind, cigarettes, spiritous liquor, precious metal objects, precious jewellery, valuable works of art, antiques, human remains, livestock, bloodstock, pets and plants.
- (h) **Instructions** means a statement of the Customer's specific requirements.
- (i) **In writing/written** means by letter, telex or facsimile.
- (j) **Owner** includes the owner, shipper and consignee of the Goods and any other person who has or may have a legal or equitable relationship to the Goods at a relevant point of time and anyone acting on their behalf.
- (k) **person** includes persons or any body or bodies corporate.
- (l) **Vehicle** is any vehicle (including but not limited to any lorry, van, trailer or car).

PART I: GENERAL CONDITIONS

Application

2 (a) All activities of the Company in the course of business, whether gratuitous or not, are subject to:

- (i) the provisions of Part I of these Conditions and, to the extent applicable, Parts II and III of these Conditions, and
- (ii) the provisions of the Company's or another applicable Tariff, if any.

(b) The following provisions shall be paramount in so far as such provisions are inconsistent with Part I of these Conditions:

- (i) the provisions of Part II of these Conditions, to the extent that the Company undertakes or arranges the carriage of Goods or Containers and any services connected therewith;
- (ii) the provisions of Part III of these Conditions, to the extent that the Company provides the services of cleaning, maintenance, repair or storage of Containers and any services connected therewith.

(c) (i) In so far as these Conditions are inconsistent with the provisions of any applicable Tariff, these Conditions shall be paramount.

(ii) Copies of the provisions of any applicable Tariff are obtainable from the Company upon written request.

Obligations of Customer

3 The Customer contracts and agrees with the Company on behalf of himself and as agent for all persons who have or may acquire any proprietary possessory or other rights in respect of Goods, Containers or Vehicles to be bound by the terms of these Conditions and by the terms of any applicable Tariff and warrants that he has the authority of all such persons to contract and to agree as aforesaid.

4 The Customer shall give sufficient and executable Instructions.

5 The Customer warrants that the description and particulars of the Goods and Containers (including, but not limited to, weight, content, measure, quantity, condition, marks, numbers and value) are complete and accurate and that the Goods and Containers are labelled in compliance with all laws, regulations and requirements that may be applicable.

6 The Customer warrants that the Goods and non-empty Containers are:

- (a) properly and sufficiently prepared, packed, stowed, labelled and/or marked;
- (b) packed in a manner adequate to withstand normal handling or storage, and

(c) in compliance with all laws, regulations and requirements that may be applicable.

In addition to (a) – (c) above, the Customer warrants that he has reasonable knowledge of matters affecting the conduct of his business, including but not limited to the terms of sale and purchase of the Goods and all other matters relating thereto.

7 The Customer undertakes to supply the Company with any information concerning the nature of the Goods and their packaging as the Company may reasonably request.

Special Instructions, Goods and services

8 (a) Unless otherwise previously agreed in writing, the Customer undertakes that no Dangerous Goods shall be delivered to the Company and that the Company shall not be caused to deal with or handle such Dangerous Goods.

(b) If Dangerous Goods in the opinion of the Company or any Authority constitute a risk to other goods, property, life or health such Goods may without notice be destroyed or otherwise dealt with at the sole discretion of the Company and at the risk and expense of the Customer.

9 (a) The Customer undertakes not to tender for transportation any Goods that require temperature control without previously giving written notice of their nature and particular temperature range to be maintained.

(b) In the case of a temperature controlled Container stuffed by or on behalf of the Customer by a third party, the Customer further undertakes that;

- (i) the Container has been properly pre-cooled or preheated as appropriate, and
- (ii) the Goods have been properly stuffed in the container, and
- (iii) its thermostatic controls have been properly set by the Customer or the third party.

If the above requirements are not complied with the Company shall not be liable for any loss of or damage to the Goods caused by such non-compliance.

10 If the Customer is in breach of 8(A) or 9 above the Goods may without notice be refused receipt by the Company, be destroyed or otherwise dealt with at the sole discretion of the Company and at the risk and expense of the Customer.

11 (a) No insurance will be effected except upon express Instructions given in writing by the Customer. All insurance effected by the Company is subject to the usual exceptions and conditions of the policies of the insurance company or underwriters taking the risk.

(b) The Company is an agent of the Customer in respect of effecting insurance.

(c) Unless otherwise agreed in writing, the Company shall not be under any obligation to effect a separate insurance on each consignment but may declare it on any open or general policy.

(d) Should the insurers dispute their liability for any reason the insured shall have recourse against the insurers only. The Company shall not have any responsibility or liability whatsoever in relation to the insurance notwithstanding that the premium upon the policy may not be at the same rate as that charged by the Company or paid to the Company by its customers.

12 Unless otherwise previously agreed in writing, the Customer undertakes that no Goods of High Value shall be delivered to the Company and that the Company shall not be caused to deal with or handle such goods. If such goods are delivered without such previous agreement, the goods may be refused receipt by the Company or stored elsewhere at the Customer's own risk and expense at the sole discretion of the Company.

13. Except in accordance with express instructions previously received in writing and accepted in writing by the Company, the Company shall not be obliged to make any declaration for the purposes of any statute, convention or contract as to the nature of value of any Goods or as to any special interest in delivery.

14. Unless otherwise previously agreed in writing or otherwise provided for under the provisions of a document signed by the Company, instructions relating to the delivery or release of Goods against payment or against surrender of a particular document shall be in writing and the Company's liability shall not exceed that provided for in respect of misdelivery of Goods.

15. Unless otherwise previously agreed in writing that the Goods shall depart or arrive by a particular date, the Company accepts no responsibility for departure or arrival dates of Goods

General indemnities

16 The Customer shall defend, indemnify and hold harmless the Company against all loss, damage, liability, costs and expense whatsoever arising from:

- (a) any breach of warranty or obligation by the Customer or arising from the negligence of the Customer or Owner,
- (b) any act or omission of the Customer or the Owner or any person acting on their behalf,
- (c) the Company complying with the Instructions given by or on behalf of the Customer or Owner,
- (d) the Company complying with the requirements of an Authority with regard to the Goods,
- (e) the handling, loading, stowage or unloading of the Goods by the Customer or Owner or any person acting on their behalf,
- (f) the nature of the Goods unless caused by the Company's negligence, or
- (g) the defective condition of or overweight Containers or Vehicles.

17 Except to the extent caused by the Company's negligence, the Customer and Owner shall be liable for and shall defend, indemnify and hold harmless the Company in respect of all duties,

taxes, imposts, levies, deposits and outlays of whatsoever nature in respect of the Goods, Dangerous Goods and/or Containers levied and for all liabilities, payments, fines, costs, expenses, loss and damage whatsoever incurred or sustained by the Company in connection therewith.

18 The Customer may, after having discharged its liability and/or obligations under Clause 14, bring a claim against the Company under Clause 21 in respect of any duties, taxes, imposts, levies, deposits and outgoings arising out of the Company's negligence.

19 (a) The Customer's bill of lading or other contracts of carriage, handling or storage shall include a provision prohibiting the making of any claim against the Company, its servants or agents, and a provision that the Company, its servants and agents shall have the benefit of any provisions, rights, defences and liberties in such contract of carriage, handling or storage excluding or limiting the liability of the Customer in respect of the Goods, Containers or Vehicles as if such provisions were expressly for their benefit.

(b) The Customer undertakes that no claim shall be made against any servant or agent of the Company which imposes or attempts to impose upon any of them any liability whatsoever in connection with the Goods, Containers or Vehicles and if any such claim should nevertheless be made, to indemnify the Company against all consequences thereof.

(c) Without prejudice to the foregoing, every such servant or agent of the Company shall have the benefit of all provisions herein, as if such provisions were expressly for their benefit. In entering into this contract the Company, to the extent of those provisions, does so not only on its behalf but as agent and trustee for such servants and agents.

(d) The Customer shall defend, indemnify and hold harmless the Company from and against all claims, costs and demands whatsoever and by whomsoever made or preferred in excess of the liability of the Company under the terms of these Conditions and without prejudice to the generality of this clause this indemnity shall cover all claims, costs and demands arising from or in connection with the negligence of the Company, its servants and agents.

(e) In this clause, "agent" includes direct and indirect sub-contractors and their respective servants and agents.

(f) Advice and information in whatever form it may be given is provided by the Company for the Customer and/or Owner only and the Customer and/or Owner shall defend, indemnify and hold harmless the Company for all liability, loss, damage, costs and expenses arising out of any other person relying on such advice or information. The Customer shall not pass such advice or information to any third party without the Company's written agreement and the Customer and/or Owner shall indemnify the Company against any loss suffered because of a breach of this condition.

Receipt

20 (a) Goods, Containers or Vehicles are not received by the Company until the person delivering them has reported to the Company's reception office or area and in addition the Company has expressly agreed to receive the Goods, Container or Vehicle. Such agreement may only be made by an agent of the Company who has actual authority to do so.

(b) The Company may refuse to receive or unload any Goods, Container or Vehicle, at its discretion where it has reasonable cause to do so, including but not limited to, where the Company is not satisfied that arrangements have or will be made for the removal of such Goods, Container or Vehicle.

Delivery and disposal

21 (a) If any Goods, Container or Vehicle is not removed from the Company's premises within 28 days of the Company having given notice in writing to the Customer, the Company shall be entitled to remove or dispose of such Goods, Container or Vehicle at the sole discretion of the Company and at the risk and expense of the Customer.

(b) If at any time any Goods in the opinion of the Company or any Authority constitute a risk to other goods, property, life or health such Goods may without notice be destroyed or otherwise dealt with at the sole discretion of the Company and at the risk and expense of the Customer.

(c) Instructions contained in the Customer's bill of lading, waybill, delivery order, or other documents shall entitle the Company to deliver to the bearer thereof notwithstanding that such bill of lading, waybill, delivery order, or other document provides for delivery to a named party or to his order. The Company is entitled to assume that the person presenting such bill of lading, waybill, delivery order or other document is the person lawfully entitled to take delivery. The Company is not required to verify signatures appearing on such bill of lading, waybill, delivery order, or other document.

Inspection

22 The Company will not be liable to the Customer if the quantity, quality, weight etc of the Goods differs from the Customer's description unless the differences are significant and

the Company has the necessary means and knowledge to identify the discrepancies.

Liability

23 The Company shall not be liable for any loss, damage, delay, duty, tax or fine, indirect or consequential loss, non-performance of any obligations, misdelivery, misdirection, costs, expense, death or injury of whatsoever nature and howsoever caused except as specified in clause 21 below.

24 Subject to the exclusions of liability in clause 23 and elsewhere in these Conditions, to the extent that it is proved that the claim arises from the negligence of the Company, its servants, agents or sub-contractors, the Company shall be liable for the type of loss or damage set out below subject to the financial limits stated.

(a) Physical loss of or damage to Goods, but not exceeding the least of:

- (i) the value of the Goods lost, or
- (ii) the reasonable cost of repair in the case of damage, or
- (iii) 2 SDR per kg of the Goods lost or damaged.

(b) Misdirection of the Goods, but not exceeding the least of:

- (i) the cost of transporting the Goods to the correct destination by the mode of transport that would have applied in the absence of such misdirection less the cost that would have been incurred in transporting the Goods to the correct destination in the absence of such misdirection, or
- (ii) the value of the Goods misdirected, or
- (iii) 2 SDR per kg of the Goods misdirected.

(c) Physical loss or damage to the Customer's owned or leased Containers or Vehicles, but not exceeding the lesser of:

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

(d) Physical loss of or damage to property of any form other than that in (a) to (c), but not exceeding the least of:

- (i) the value of the property lost, or
- (ii) the reasonable cost of repair in the case of damage, or
- (iii) 75,000 SDR each event or events arising from a common cause.

(e) In no event shall the Company's liability under one or more of sub-clauses (a) to (d) exceed 250,000 SDR per event or events arising from a common cause.

(f) "SDR" refers to a Special Drawing Right. The SDR shall be as defined by the International Monetary Fund and the value of a SDR shall be calculated as at the date when settlement is agreed or judgement.

25 For the purposes of clause 21:

(a) the value of Goods is the invoice value plus freight and insurance if paid plus any Customs duty or tax incurred on the Goods in respect of their carriage and not recoverable from any Authority or, in the absence of such value, is the market value at the place where the Company handled the Goods;

(b) the value of the Customer's Container or Vehicle is its lease value if leased by the Customer and if owned by the Customer it is the market value at the place where the loss or damage occurred;

(c) the value of property under 21(d) is the market value at the place where the loss or damage occurred.

26 The Company shall not have any liability whatsoever for claims arising from:

(a) an act or omission of the Customer or Owner or any person acting on their behalf,

(b) the Company complying with the instructions given by or on behalf of the Customer or Owner,

(c) an act or order of any Authority,

(d) the insufficiency of the packing or labelling of the Goods or Containers except where such service has been provided by the Company,

(e) the handling, loading, stowage or unloading of the Goods by the Customer or Owner or any person acting on their behalf,

(f) the nature of the Goods,

(g) the defective condition of or overweight Containers or Vehicles,

(h) riots, civil commotions, strikes, lockouts, stoppage or restraint of labour,

(i) explosion, fire, flood or storm,

(j) the breakdown of or failure of any handling equipment of the Company, providing the Company has complied with such testing and maintenance standards for the equipment as are customary in the Company's business and country,

(k) the breakdown of, accident to, failure or interruption of or reduction in the mains electrical supply to the Company, it being agreed that the Company is under no obligation to have available any auxiliary power supply, or

(l) any cause which the Company could not avoid and the consequences whereof it could not prevent by the exercise of reasonable diligence.

27 If, despite the exclusions of liability in clauses 20, 23 or elsewhere in these Conditions, the Company is held to be liable in respect of any claim and such liability is not limited by the provisions of clause 21, the Company's liability shall be limited to twice its charges to the Customer in respect of its services to which the claim is most closely connected.

Charges, etc.

28 (a) The Customer shall pay to the Company in cash or as agreed all sums immediately when due without reduction or deferment on account of any claim, counterclaim or set-off.

(b) When the Company is instructed to collect freight, duties, charges or other expenses from any person other than the Customer, the Customer shall be responsible for the same on receipt of evidence of demand and non payment by such other person when due.

(c) On all amounts overdue to the Company, the Company shall be entitled to interest, calculated in accordance with law.

Lien

29 (a) The Company shall have a particular and general lien on all Goods, Containers and/or Vehicles and/or documents relating thereto in its possession for all sums of whatsoever kind and nature due at any time from the Customer or Owner and on giving 28 days notice in writing to the Customer, shall be entitled to sell or dispose of such Goods, Containers and/or Vehicles and/or documents at the expense of the Customer and without any liability to the Customer and Owner and apply the proceeds in or towards the payment of such sums. Upon accounting to the Customer for any balance remaining after payment of any sum due to the Company and the costs of sale or disposal the Company shall be discharged of any liability whatsoever in respect of the Goods, Containers and/or Vehicles and/or documents. If on the sale of the Goods, Containers and/or Vehicles and/or documents the proceeds fail to realise the amount due, the Company shall be entitled to recover the difference from any of the parties included in the terms Customer or Owner.

(b) In any event any lien shall:

- (i) survive the delivery of the Goods, and
- (ii) extend to cover the cost of recovering any sums due and for that purpose the Company shall have the right to sell the Goods, Containers and/or Vehicles and/or documents by public auction or private treaty, without notice to the Customer and/or Owner and at the Customer and/or Owner's expense and without any liability towards the Customer and/or Owner.

Notice of Loss, Time Bar

30 The Company shall be discharged of all liability unless:

- (a) (i) notice of any claim is received in writing by the Company or its agent within 14 days after the date specified in (b) below, except where the Customer can show that it was impossible to comply with this time limit and that the claim has been made as soon as it was reasonably possible so to do, and
- (ii) suit is brought in the proper forum and written notice thereof received by the Company within 9 months after the date specified in (b) below.

(b) (i) in the case of loss or damage to Goods, the date of delivery of the Goods,

(ii) in the case of delay or non-delivery of the Goods, the date that the Goods should have been delivered,

(iii) in any other case, the event giving rise to the claim, otherwise any claim shall be deemed to be waived and absolutely barred.

Miscellaneous

31 Heading of clauses or groups of clauses in these conditions are for indicative purposes only.

32 Any notice served by post shall be deemed to have to be given on the third day following the day on which it was posted to the address of the recipient of such notice last known to the Company.

33 The defences and limits of liability provided for by these Conditions shall apply in any action against the Company whether such action be founded in contract or tort including claims made in bailment.

34 If any legislation is compulsorily applicable to any business undertaken, these Conditions shall, as regards such business, be read as subject to such legislation and nothing in these 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 these Conditions be repugnant to such legislation to any extent such part shall as regards such business be overridden to that extent and no further.

35 No servant or agent of the Company shall have power to waive or vary any of the terms hereof unless such waiver or variation is in writing and is specifically authorised or ratified in writing by a director or officer of the Company who has the actual authority of the Company so to waive or vary.

Applicable law

36 These Conditions and any claim or dispute arising out of or in connection with the services of the Company shall be subject to the laws of the State of New York.

PART II: CARRIAGE UNDERTAKEN OR ARRANGED BY THE COMPANY

37 The indemnities etc in Part I above apply also to Parts II and III below

38 (a) If the Company undertakes or arranges the carriage of Goods or Containers and any handling or storage connected therewith, it does so solely as an agent for the Customer and shall not be liable for the acts or omissions of those engaged to perform the carriage, handling or storage.

(b) Except to the extent caused by the Company's negligence, the Customer shall defend, indemnify and hold harmless the Company in respect of all liability, loss, damage, costs or expenses arising out of any contracts made in the procurement of the Customer's requirements in accordance with clause 35 (a).

39 Unless otherwise agreed in writing, when engaging a person to perform the services of carriage, handling or storage, the Company may as agents enter into contracts with such persons on any terms whatsoever including, without giving notice, terms less favourable than the terms in Part I of these Conditions.

40 In the event of a claim in respect of the Goods or Containers, the Company shall provide the Customer with particulars of the identity, services and charges of persons instructed to perform the carriage, handling or storage to the extent that such particulars are relevant to the Customer's claim.

PART III: COMPANY PROVIDING SERVICES FOR CLEANING, MAINTENANCE OR REPAIR OF CONTAINERS OR STORAGE OF EMPTY CONTAINERS AND ANY SERVICES CONNECTED THEREWITH

41 Subject to clause 30 above, if the Company provides services for cleaning, maintenance or repair of Containers or storage of empty Containers and any services connected therewith, the Company shall not be liable for any improper performance or non performance of such services, or any consequences whatsoever arising therefrom, except to the extent provided in this Part III.

42 (a) The Company's liability shall not exceed the reasonable cost of rectifying the services improperly or not performed by the Company, subject to a limit per Container of that Container's market value.

(b) At the Company's sole discretion, the Company may rectify at its own expense the services improperly or not performed. If the Company exercises this option, or is not given an opportunity by the Customer to exercise this option, the Company shall not be liable for any costs incurred by the Customer or any other person in rectifying such services.

43 The Customer undertakes to inspect the Container on redelivery to the Customer or such other person as is required. The Company shall not be liable and the Customer shall defend, indemnify and hold harmless the Company against any loss, damage, liability, cost and expense in respect of or arising from improper or non performance of the Company's services which would have been apparent upon reasonable inspection of the Container at the time of redelivery and was not brought to the Company's attention in writing at the time of redelivery. This indemnity is in addition to the indemnities in Part I of these Conditions.

44. The Company shall be discharged of all liability unless:

- (a) (i) notice of any claim is received in writing by the Company or its agent within 14 days after the date specified in (b) below, except where the Customer can show that it was impossible to comply with this time limit and that the claim has been made as soon as it was reasonably possible so to do, and
- (ii) suit is brought in the proper forum and written notice thereof received by the Company within 9 months after the date specified in (b) below.

(b) (i) in the case of loss or damage to Goods, Containers and/or Vehicles the date of delivery of the Goods, Containers and/or Vehicles,

(ii) in the case of delay or non-delivery of the Goods, Containers and/or Vehicles the date that the Goods, Containers and/or Vehicles should have been delivered,

(iii) in any other case, the event giving rise to the claim, otherwise any claim shall be deemed to be waived and absolutely barred.