

## STANDARD TERMS OF CONTRACT

### APA LOGISTICS LTD

#### 1. DEFINITIONS

- 1.1 For the purposes of these contractual terms, unless inconsistent with the context, the following words shall have the following meaning:
- “the/ these Contractual Terms” - these Standard Terms of Contract
- “the Customer” - any person or persons at whose request or on whose behalf or for whom APA undertakes any business, or provides any advice, information or Services, whether gratuitously or not
- “the Goods” - any Goods of any nature whatsoever in respect of which APA provides Services, and includes without limitation, any container, transportable tank, flat pallet, package or any other form of covering, packaging, container or equipment used in connection with or in relation to such Goods
- “the Services” - any Services of any nature whatsoever that APA performs or may be required to perform for and on behalf of a Customer, including, without limitation, the handling, transportation, consolidation, forwarding and clearing, receipt, warehousing, storage and despatch of Goods, together with any advice or information given in respect thereof, whether gratuitously or not
- “APA” - Atlantic Pacific Agencies Limited, Registration No. 73013791

1.2 The head notes to the clauses of these Contractual Terms are inserted for reference purposes only and shall in no way govern or affect the interpretation of these contractual terms.

1.3 Unless inconsistent with the context, an expression which denotes:-

- 1.3.1 any gender includes the other genders;
- 1.3.2 a natural person includes an artificial person and vice versa;
- 1.3.3 the singular includes the plural and vice versa.

1.4 If any provision in a definition is a substantive provision conferring rights or imposing obligations on any party, notwithstanding that it is only in the interpretation clause, effect shall be given to it as if it were a substantive provision of this agreement.

1.5 Where any term is defined within the context of any particular clause in these Contractual Terms, the terms so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, shall bear the meaning ascribed to it for all purposes in these Contractual Terms, notwithstanding that the term has not been defined in this interpretation clause.

#### 2. APPLICABILITY

All and any business undertaken by APA, including without limitation in connection with the supply of Goods and the provision of Services is and shall be subject to the terms contained in these Contractual Terms, which shall apply to the exclusion of any other terms and conditions (including without limitation any other general or standard trading terms and conditions of the Customer) unless otherwise specifically agreed to in writing by APA.

#### 3. STATUS OF APA AND THE CUSTOMER

- 3.1 APA is not a common carrier nor a public carrier, nor a depository for or without reward.
- 3.2 Every Customer contracting with APA to provide Services shall be deemed to do so in every respect not only on its own behalf (as principal) but also as agent on behalf of every person owning or otherwise interested at any time in any Goods that are the subject of the Services in question.
- 3.3 Every Customer warrants that it has the authority to contract with APA, either as owner of the Goods in question, or as the authorised agent of the persons referred to in clause 3.2.
- 3.4 If the Customer is an agent acting on behalf of a principal, APA may, at its sole discretion, claim performance and/or payment, from both the agent and the principal, or any one of them.

#### 4. GENERAL ACKNOWLEDGEMENTS BY AND OBLIGATIONS OF THE CUSTOMER

The Customer agrees and acknowledges that:-

- 4.1 APA shall be entitled to undertake such credit reference checks on the Customer and the Customer's members, directors or shareholders with such persons or parties (including without limitation the Customer's bankers and any credit bureau) as APA may reasonably require from time to time;
- 4.2 APA shall be entitled to have access to such information as it may reasonably require in order to assess the ability of the Customer to pay any amounts due to APA and the Customer shall allow and procure that APA obtain such access;
- 4.3 APA may at any time and for any reason whatsoever immediately withdraw all and any credit facilities extended to the Customer and claim forthwith from the Customer the full outstanding balance due and payable in terms of such facility;
- 4.4 in the event that it fails to effect payment of any amount whatsoever due to APA in terms of this agreement by the due date for such payment, APA shall at any time be entitled to call upon and the Customer shall be obliged to immediately furnish APA with copies of the Customer's business management accounts and annual financial statements over such period as APA may require;
- 4.5 it shall ensure, where relevant, that the Goods bear all proper marks and labels to facilitate easy identification so as to enable APA to perform the Services;
- 4.6 it shall ensure that the Goods are fit for the safe and proper execution of the Services.

#### 5. CHARGES AND PAYMENT

- 5.1 APA shall be remunerated by the Customer in accordance with the rates or charges quoted to the Customer from time to time.
- 5.2 Unless otherwise agreed in writing, all sums shall be paid to APA without set-off or deduction on delivery of the invoice.
- 5.3 All payments due by the Customer to APA shall be made to APA without deduction or demand and payment shall not be withheld or deferred on account of any counterclaim or set-off.
- 5.4 An amount not paid on due date shall, at the discretion of APA, bear interest from the due date until it is paid, at the prime lending rate of APA's Principle banker in Hong Kong.
- 5.5 The Customer must notify APA of any dispute relating to any invoice within 14 (FOURTEEN) days after the date of invoice setting out clearly the areas and issues of dispute, failing which the invoices shall be deemed to be correct in all respects. The parties undertake to use their best endeavours to resolve any such disputes within 30 working days after the date of the invoice in question.
- 5.6 Any quotation given shall be on the basis of immediate acceptance and shall be subject to withdrawal or revision by APA. Further, unless otherwise agreed in writing, APA shall notwithstanding acceptance, be at liberty to revise estimates or charges (with or without notice) in the event of changes occurring in currency exchange rates, rates of freight, surcharges, insurance premiums, equipment rental rates, labour rates and any other charges applicable to the handling of the Goods.
- 5.7 When Goods are accepted or dealt with on instructions to collect freight, duties, charges or other expenses from the consignee or any other person, the Customer shall nevertheless remain responsible for same if they are not paid by such consignee or other person immediately when due.
- 5.8 If accepted by APA, instructions to collect payment on delivery in cash or otherwise shall be subject to the condition that APA in the matter of such collection will be liable for the exercise of reasonable care only.
- 5.9 The Customer, sender, owner, consignor and/or consignee and their agents, if any, shall be liable for any duties, taxes, imposts, levies, deposits, unpaid freight or outlays of whatsoever nature levied in connection with the Goods, and for any payments, fines, expenses, loss or damage whatsoever incurred or sustained by APA in connection therewith. The Customer indemnifies APA against all such amounts and agrees to pay them on demand.
- 5.10 In the event that payment to APA is effected electronically, the Customer bears the risk in respect of such payment until such time as the funds are received and cleared into APA's bank account.

#### 6. WAREHOUSING

- 6.1 In providing the Services, the Goods may be warehoused or otherwise held on such terms at any place as determined by APA in its absolute discretion. At all times the Goods will be held at the Customers risk and expense.
- 6.2 The Customer warrants that:
- 6.2.1 all Goods delivered to APA for warehousing shall be properly packed and labeled and in the event of any such Goods requiring special storage, packing or labeling by reason of their nature or properties or in accordance with any regulation, convention or statute, that all such requirement shall be complied with; and
- 6.2.2 notice of any special storage requirements of any such Goods shall be given to APA in writing prior to the delivery of the Goods into the custody of APA or its agents, provided that APA shall be obliged to take delivery of any such Goods if it believes that such Goods or the handling or storage thereof are for any reason whatsoever undesirable.

- 6.3 If APA agrees to undertake the packing of the Goods into any container or the packaging or unitization of the Goods for any purpose, such packaging or unitization shall be undertaken at the sole risk and expense of the Customer. The Customer shall provide APA with full packing and labeling instructions in writing, including but not limited to any requirements as to the internal or other securing, mass distribution, maximum aggregate mass restrictions, labeling, temperature control or other restrictions, information as to the properties of the Goods and any noxious or other possible hazards or dangerous properties they might possess.
- 7. TRANSPORT DOCUMENTS**  
APA may issue in respect of the whole or any part of any contract for the movement of Goods, a combined transport document or bill of lading in a form that shall be within APA's discretion, including a FIATA combined transport bill of lading, a warehouse and/or forwarding receipt, an air or sea waybill, a consignment or delivery note, a container movement or transport order, a groupage or house bill of lading or a receipt for shipment or dispatch bill of lading (any of which may reflect APA or any other as the carrier in terms thereof) provided that where a combined transport document or bill of lading is issued, these trading terms and conditions shall continue to apply as between APA on the one part and the Customer and/or the Owner on the other part.
- 8. APA'S DISCRETION IN THE ABSENCE OF INSTRUCTIONS**  
In the absence of specific instructions given timeously in writing by the Customer to APA:
- 8.1.1 it shall be in the sole discretion of APA to decide at what time to perform or to procure the performance of any or all of the acts which may be necessary for the discharge of its obligations to the Customer;
- 8.1.2 APA shall have the sole discretion to determine the means, route and procedure to be followed by it in performing all or any of the acts or Services it has agreed to perform; and
- 8.1.3 in all cases where there is a choice of tariff rates or premiums offered by any carrier, warehouseman, underwriter or any other person depending on the declared value of the relevant Goods or the extent of the liability assumed by the carrier, warehouseman, underwriter or any other person, it shall be in the sole discretion of APA as to what declaration, if any, shall be made, and what liability, if any, shall be imposed on the carrier, warehouseman, underwriter or any other person.
- 9. SECURITY**
- 9.1 As security for the due fulfilment (including without limitation, payment) by the Customer to APA of all its obligations arising from any cause whatsoever, the Customer assigns to APA all its right title and interest in and to any money held by APA on behalf of the Customer, and any claims the Customer has against the Receiver for a refund of Value Added Tax which have or may in the future accrue to it from time to time.
- 9.2 The Customer shall deliver to APA upon demand all documents necessary to perfect this assignment and to serve all necessary notices to effect the same on demand.
- 10. TIME NOT OF THE ESSENCE**
- 10.1 Although APA will make an effort to render the Services within any time stated, such stated time is approximate only and shall not be a material term. It is also subject to the Customer timeously providing any instruction or information to enable APA to carry out its obligations.
- 10.2 Unless otherwise agreed in writing, all Services to be rendered will be executed by APA during normal working hours.
- 10.3 APA will not be liable for any delay in the delivery of goods no matter what the cause of that delay.
- 11. RECEIPT OF GOODS, DELIVERY AND RISK**
- 11.1 Unless otherwise agreed in writing, the Customer shall deliver the Goods to, or take delivery of the Goods from such place as may be stipulated by APA.
- 11.2 If APA agrees to accept delivery of, or to deliver the Goods to any other place then the following provisions will apply:
- 11.2.1 the Customer will be liable for all the costs of delivery and shall pay such costs to APA on invoice;
- 11.2.2 APA may, acting as the Customer's agent, arrange for someone to deliver the Goods to or for the Customer ("the carrier") on such terms as APA decides, and the Customer will be liable for all the carrier's charges;
- 11.2.3 APA may effect delivery and the Customer shall accept delivery of the Goods as available;
- 11.2.4 if it is apparent to APA that on receipt of the Goods by APA, they are damaged or defective, APA shall advise the Customer in writing and shall provide reasonable assistance (at the cost of the Customer) to the Customer to enable the Customer to make any claim (whether for insurance or otherwise) which the Customer considers necessary;
- 11.2.5 if the Customer does not take delivery of the Goods from APA or the carrier at the agreed time or place, APA may charge the Customer for all expenses incurred by APA in attempting to make delivery.
- 11.3 Where the Customer provides the vehicle or rail truck, APA shall not be responsible for the suitability of that vehicle or rail truck to transport the Goods properly or safely, or at all.
- 11.4 Where the Customer or shipping line provides any container or any other transportation unit, APA shall not be responsible for the suitability of that container or other transportation unit to carry or transport the Goods properly or safely, or at all.
- 11.5 Where the Goods are in bulk or in break bulk, APA will make reasonable efforts to maximise the quantity of the Goods to be loaded onto or into vehicle, rail truck, container or other transport unit. Accordingly, APA shall not be liable or responsible to the Customer for any inability to fit the requested quantity of the Goods into the vehicles, rail trucks, containers or other transport units.
- 12. GOODS INFORMATION**
- 12.1 The Customer shall provide to APA such particulars of the Goods, including weights, measurements, characteristics and descriptions as APA may reasonably require for the purpose of providing and performing the Services. The Customer guarantees and APA shall at all times be entitled to rely upon all particulars and information furnished in terms of this clause. Without limiting the foregoing, the Customer guarantees to APA the accuracy of all marks, measurements, numbers and weights and any other information given, reflected in or shown on any documentation relating to the Goods, including, but not limited to packing lists, invoices, bills of lading, waybills, customs and revenue service documents.
- 12.2 Unless otherwise agreed in writing by APA the Goods shall be handled at the Customer's risk and the Customer hereby indemnifies APA against any claim, loss or damage faced or suffered by it as a result of any breach of this clause 12.
- 13. HAZARDOUS OR DANGEROUS GOODS**
- 13.1 APA will not be obliged to provide any Services in respect of Goods which are hazardous, dangerous, noxious or liable to cause injury or damage to any person, Goods or property whatsoever (including without limitation those likely to harbour or encourage vermin or other pests) ("Dangerous Goods"), unless it agrees to do so.
- 13.2 If Services are provided in respect of Dangerous Goods, whether with or without the knowledge or express consent of APA, the Customer indemnifies APA against all loss or damage suffered by APA, or any third party, caused by or as a result of the presence of, any Dangerous Goods.
- 13.3 APA may at its discretion remove, sell, destroy or otherwise dispose of any Dangerous Goods received by it or under APA's control whether with or without its knowledge or express consent. APA will not be liable in any way to the Customer or any other party for compensation or the value thereof.
- 13.4 The Dangerous Goods or the container, package or other covering in which the Dangerous Goods are to be tendered to APA or its agents shall be prominently marked on the outside so as to indicate the nature and the character of the Goods. Such markings must comply with internationally and locally accepted practices as well as all applicable laws, regulations or requirements.
- 14. PERISHABLE GOODS**
- 14.1 Without limiting or affecting any other terms of these Contractual Terms, Goods (whether perishable or otherwise) in the care, custody or control of APA may at the customer's expense be sold by private treaty or public auction or otherwise disposed of by APA in its sole discretion, without notice to the customer, sender, owner or consignee, if:
- 14.1.1 such Goods have begun to deteriorate or are likely to deteriorate;
- 14.1.2 such Goods are insufficiently addressed or marked;
- 14.1.3 the Customer cannot be identified; or
- 14.1.4 the Goods have not been collected or accepted by the Customer or any other person after the expiration of 21 days from APA notifying the Customer in writing to collect or accept such Goods, provided that if APA has no address for the Customer such notice period shall not be necessary.
- 14.2 Payment or tender of the net proceeds, if any, of the Goods after the sale thereof, after deduction of those charges and expenses incurred by APA in respect thereof shall be equivalent to delivery of such Goods.
- 15. INSURANCE**
- 15.1 APA has no obligation to take out and maintain any form of insurance cover on the Goods. This is the sole responsibility of the Customer.
- 15.2 The Company shall not be obliged to make any declaration for the purpose of any Statute, convention or contract as to the nature of any Goods or as to any special interest in delivery or otherwise unless expressly instructed by the Customer in writing. In particular, APA shall be under no obligation, unless written

- instructions to that effect are given to, and accepted in writing by APA, to make any declaration or to seek any special protection or cover from any carrier, in respect of any Goods which are, or fall within the definition by that body of dangerous or very dangerous Goods or Goods liable to be stored in the open.
- 15.3 In all cases where there is a choice of tariff rates or premiums offered by carriers, warehousemen, underwriters, or others, depending upon the value declared or the extent of the liability assumed by the carrier, warehousemen, underwriter or other persons, it shall be in the entire discretion of APA as to what declaration, if any, shall be made and what liability, if any, shall be imposed on the carrier, warehousemen, underwriters or other persons, unless express instructions in writing are timeously given by the Customer and accepted by APA.
- 16. CONTRACTING AS AGENT**
- 16.1 The Customer acknowledges that APA itself will not always provide, perform or carry out the Services, which may be performed by third parties. The Customer authorises APA to act as its agent in contracting with such third parties for the provision or performance of the Services. The Customer acknowledges that such contracts shall bind the Customer to the third party and be on such terms as APA considers reasonable.
- 16.2 APA shall have no liability of any nature whatsoever to the Customer for the performance by the third parties of their obligations to the Customer in respect of the Services.
- 17. CLAIMS / LIMITATION OF LIABILITY**
- 17.1 APA shall not be liable to the Customer for any loss or damage of any nature whatsoever, whether actual, prospective or contingent, other than in terms of this clause 17.
- 17.2 APA shall not be liable to the Customer for any loss or damage howsoever caused and of any nature whatsoever, nor the death nor injury to any person, unless the Customer or the party who suffers such loss, damage, death or injury, proves that the loss, damage, death or injury arose from the gross negligence of APA, its servants, agents, sub-contractors or any person for whom APA is vicariously liable.
- 17.3 In any event, and notwithstanding clause 17.2, APA shall not be liable for any consequential loss, special damages, demurrage or loss of profits.
- 17.4 If APA is liable to the Customer in terms of clause 17.2, then notwithstanding anything to the contrary contained in these Contractual Terms or otherwise, APA's liability, howsoever arising, within contract or in delict, in connection with the Services shall not exceed the lower of :
- 17.4.1 the value of the Goods evidenced by the relevant documentation or declared by the Customer for Customs purposes or for any purpose connected with their transportation or handling;
- 17.4.2 the value of the Goods declared for insurance purposes;
- 17.4.3 double the amount of the fees charged by APA for the Services in connection with the Goods, but excluding any amount payable to sub-contractors, agents and third parties.
- 17.5 The Customer must give APA immediate notice of any occurrence giving rise to any loss, damage, injury or death.
- 17.6 The Customer shall have no claim against APA and APA shall be discharged from all liability unless legal proceedings are commenced against it within one year of the date of the occurrence giving rise to the claim.
- 18. INDEMNITY**
- The Customer indemnifies APA and holds it harmless, against all and any claims, loss, damages or liability of whatsoever nature and howsoever arising, which may at any time be suffered or incurred or made against APA, and whether in contract or tort, in respect of loss, damage or injury, howsoever caused, including without limiting the generality hereof, the negligence of APA in relation to or directly or indirectly arising from or connected with Goods owned by the Customer or any owner or consignee of the Goods who is not the Customer and, delivered to APA, including, but not limited to, any claims made by the Customs and Excise and other lawful authority of the country of jurisdiction
- 19. FRUSTRATION**
- 19.1 If any performance by APA is prevented or delayed by the closure of a port, strikes, lock-outs, shortened working hours, shortage of labour or materials, delays in transport, accidents of any kind, any default or delay by any sub-contractor of APA, war, political or civil disturbances, the elements or any other cause whatever beyond APA's control, then APA shall have the election either:
- 19.1.1 to cancel the contract relating to the performance in question; or
- 19.1.2 subject to clause 19.2, to extend the time for performance until the cause preventing or delaying performance ceases to apply.
- 19.2 If APA elects to extend the time for performance in terms of clause 19.1.2, the Customer shall be entitled to cancel the contract if APA does not commence or recommence performance within a period of 30 days following the original date of prevention or delay of performance, by giving written notice to that effect to APA.
- 20. LIEN**
- 20.1 APA will have a lien on all Goods, freight money and documents, including but not limited to Bills of Lading, sea waybills and import permits, in its possession or under its control for any amount owing to it by the Customer (whether or not such amounts relate to such Goods, freight, money or documents). If the Customer is in breach of these Contractual Terms or any other agreement with APA, APA shall have the right to sell, without notice to the Customer, the whole or any part of the Goods, either by public auction or by private treaty and to apply the proceeds of such sale, after deducting all expenses thereof, in payment towards any sum due to APA by the Customer.
- 20.2 Any surplus will be paid over to the Customer, within 90 days after such sale or, in the event of APA being unaware of the whereabouts or address of the Customer, on application of the Customer.
- 20.3 Where APA has, in accordance with the provisions of clause 20.1, sold only a part of the Goods stored and the proceeds of such sale are sufficient to pay to APA all monies due to it by the Customer up to date thereof, the Customer will be entitled to take delivery of the remainder. APA will have the right to charge for the storage of any of the Goods forming part of such remainder of which delivery is not taken by the Customer, in accordance with the other provisions of these Contractual Terms and, without notice to the Customer, to recover any such remuneration in accordance with the provisions of clause 20.1.
- 20.4 The exercise by APA of any of the rights accorded to it by this clause 20.2 will be without prejudice to any other rights it may have under this agreement or at common law in respect of the non-payment by the Customer of APA's remuneration.
- 21. SHRINKAGE**
- The Customer acknowledges that in the course of performing the Services there may inevitably be a loss of or to the Goods. Subject always to the provisions of clause 17, APA shall in any event not be liable for any loss of the Goods, which is less than 2% of the value of the Goods in respect of which Services are rendered by APA.
- 22. CANCELLATION**
- 22.1 In addition to any other rights it may have, APA may cancel any or all of its contracts with the Customer if the Customer :
- 22.1.1 is, other than for the purposes of reconstruction or amalgamation, placed under voluntary or compulsory liquidation, OR
- 22.1.2 makes any arrangement or composition with its creditors generally or ceases or threatens to cease to carry on business;
- 22.1.3 commits a breach of any of the terms hereof and remains in default after receipt by it of written notice from APA calling for such breach to be remedied.
- 22.2 As soon as a contract between APA and the Customer is cancelled pursuant to clause 22.1, all amounts owing in terms of that contract will immediately become due and payable.
- 22.3 Any termination pursuant to the preceding provisions of this clause 22 shall be without prejudice to any other accrued rights of any nature whatsoever that APA may have.
- 23. CONFLICT**
- Where any of the standard terms of contract conflict with any statutory laws of the Hong Kong SAR, it shall not render the whole null and void save to the extent of such conflict which shall be severed from the rest of the terms.
- 24. THIRD PARTIES TO BENEFIT**
- The immunities, indemnities, rights and limitations of liability both as to cause and amount enjoyed by APA, shall extend and apply to APA's servants, agents and sub-contractors acting within the course and scope of their employment as such.
- 25. NOTICES ADDRESS AND DOMICILIUM**
- 25.1 All notices, demands, communications or payments intended for the Customer may be made or given at such party's last known address as given to APA.
- 25.2 A notice sent by APA to the Customer shall be deemed to be received:
- 25.2.1 on the same day, if delivered by hand or email or fax;
- 25.2.2 on the tenth day after posting, if sent by prepaid registered mail.

**26. GENERAL**

- 26.1 This agreement constitutes the sole record of the agreement between the parties in regard to the subject matter thereof.
- 26.2 No party shall be bound by any express or implied term, representation, warranty, promise or the like, not recorded herein.
- 26.3 No addition to, variation or consensual cancellation of this agreement shall be of any force or effect unless in writing and signed by or on behalf of all the parties.
- 26.4 No indulgence which any of the parties ("the grantor") may grant to any other or others of them ("the grantee(s)") shall constitute a waiver of any of the rights of the grantor, who shall not thereby be precluded from exercising any rights against the grantee(s) which might have arisen in the past or which might arise in the future.  
The parties undertake at all times to do all such things, to perform all such acts and to take all such steps and to procure the doing of all such things, the performance of all such actions and the taking of all such steps as may be open to them and necessary for or incidental to the putting into effect or maintenance of the terms, conditions and import of this agreement.
- 26.5 Notwithstanding the provisions of any legislation or other law regulating electronic communications and transactions, APA shall only be deemed to have received electronic data and/or messages when such electronic data and/or messages have been retrieved, processed and read by the addressee. Under no circumstances whatsoever and howsoever arising (including negligence on the part of APA or its employees) shall APA be liable for any loss or damage arising from or consequent upon the provision by APA to the Customer in whatever manner and/or form, of incorrect information, including electronically communicated information or data, where such incorrect information or data has been generated by and provided to APA by any person with whom APA conducts business, and/or any other third party. APA shall furthermore under no circumstances whatsoever be liable for any loss or damage arising from or consequent upon any failure and/or malfunction, for whatever reason, and regardless of negligence in whatever degree or part of APA, of APA's computer systems and/or software programmes, provided and/or operated by APA and/or by any person with whom APA conducts business, and/or any 3<sup>rd</sup> party, and which systems shall include, but not be limited to, APA's internet based suite of packages or electronic automated information service to its Customers.

**27. LAW AND JURISDICTION**

The laws of the Hong Kong SAR shall apply to this contract and the courts of the Hong Kong SAR shall have the non-exclusive jurisdiction to hear all disputes hereunder between the parties referred to herein

**HAVING READ, UNDERSTOOD AND AGREED TO BE BOUND BY THE TERMS AND CONDITIONS CONTAINED ABOVE:**

\_\_\_\_\_  
Signature    Print Full Names    Place    Date

Duly authorized to bind the Customer.

\_\_\_\_\_  
Witnessed :