

FORWARD TRADING CONDITIONS



CONDITIONS FOR USE BY FREIGHT FORWARDERS

Dear Member,

These conditions are set up for use by our forwarding Members but they are not generic conditions and do require some input from you before they are suitable for use.

These conditions are principally set out according to English Law and will need to be read thoroughly so that you can input your local Law to them. In addition there are a number of clauses that have blank spaces in them for you to insert applicable liability values. These are explained in the notes on completion, which are the last 4 pages of the document.

The TT Club does not presume to take business away from your legal department or any particular lawyers that you may use regularly. These conditions are a basic guide to providing some liability limits and protection.

We recommend that you complete the conditions, from the notes on completion, and then arrange for a local lawyer to look at these conditions to assure you of their suitability for your organisation.

We hope that you will be able to make use of these conditions and trust that by having the basic elements set out for you, some valuable time will be saved in setting up your own conditions.

As an alternative to these conditions, if you are a member of your National Forwarding Association, you may like to assess the National Associations conditions.

The TT Club will normally accept National Forwarding Association Conditions as your trading conditions and will write the fact that you use NFA conditions into your liability policy of insurance.

THIS DOCUMENT IS NOT A PRINTER'S PROOF

Members using this document must ensure that it meets their business and legal requirements and must also check all aspects of this document before use. It is imperative that any printer's proof generated from this copy is checked for errors of typography and omission.

CONDITIONS FOR USE BY FREIGHT FORWARDERS

Part I: General conditions

Definitions

1. In these conditions

- a. **Authority** A duly constituted legal or administrative person, acting within its legal powers and exercising jurisdiction within any nation, state, municipality, port or airport.
- b. **Carriage** means the whole or any part of the operations and services of whatsoever nature undertaken by the Company in relation to the Goods, including but not limited to the loading, unloading, storage, warehousing and handling of the goods.
- c. **Company** is ECOSPHERE GLOBAL LOGISTICS LLC
- d. **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.
- e. **Customer** means any person, whether themselves an agent or a principal, at whose request or on whose behalf the Company provides a service.
- f. **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.
- g. **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;
- h. **Hague Rules** means the provisions of the International Convention for the Unification of certain rules Relating to Bills of Lading signed at Brussels on 25th August 1924;
- i. **Instructions** means a statement of the Customers specific requirements;
- 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.

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

The Customer's attention is drawn to the Clauses hereof that exclude or limit the Company's liability and those that require the Customer to indemnify the Company in certain circumstances.

Application

2. a. Subject to sub-clause (B) below, all services and activities of the Company in the course of business of the Company whether gratuitous or not are subject to these Conditions.
 - i) The provisions of Part I shall apply to all such services and activities.
 - ii) The provisions of Part II shall only apply to the extent that the Company provides such services and activities as agents.
 - iii) The provisions of Part III shall only apply to the extent that the Company provides such services and activities as principals.
 - b. Where a document bearing a title of or including "bill of lading" (whether or not negotiable), or "waybill" is issued by or on behalf of the Company and provides that the Company contracts as carrier, the provisions set out in such document shall be paramount in so far as such provisions are inconsistent with these Conditions.
 - c. Every variation, cancellation or waiver of these Conditions must be in writing signed by a Director of the Company. Notice is hereby given that no other person has or will be given any authority whatsoever to agree to any variation, cancellation or waiver of these Conditions.
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3. All services and activities are provided by the Company as agents except in the following circumstances where the Company acts as principal:
 - a. where the company performs any carriage, handling or storage of Goods but only to the extent that the carriage is performed by the Company itself or its servants and the Goods are in the actual custody and control of the Company, or
 - b. where prior to the commencement of any carriage, handling or storage of Goods the Customer in writing demands from the Company particulars of the identity, services or charges of persons instructed by the Company to perform part or all of the carriage, the Company shall be deemed to be contracting as a principal in respect of that part of the carriage in respect of which the Company fails to give such particular demanded within 28 days of the Company's receipt of such demand, or
 - c. to the extent that the Company expressly agrees in writing to act as a principal, or
 - d. to the extent that the Company is held by a court of law to have acted as a principal.

4. Without prejudice to the generality of clause 3,
- a. the charging by the Company of a fixed price for a service or services of whatsoever nature shall not in itself determine or be evidence that the Company is acting as an agent or a principal in respect of such service or services;
 - b. the supplying by the Company of their own or leased equipment shall not in itself determine or be evidence that the Company is acting as an agent or a principal in respect of any carriage, handling or storage of Goods;
 - c. the Company acts as an agent where the Company procures a bill of lading or other document evidencing a contract of carriage between a person, other than the Company, and the Customer or Owner;
 - d. the Company acts as an agent and never as a principal when providing services in respect of or relating to customs requirements, taxes, licenses, consular documents, certificates of origin, inspection, certificates and other similar services;
 - e. Quotations are given on the basis that immediate acceptance and are subject to the right of withdrawal or revision. If any changes occur in the rates of freight, insurance premiums or other charges applicable to the goods, quotations and charges shall be subject to revision accordingly with or without notice.

Obligations of Customer

- 5. The Customer warrants that he is either the Owner or the authorised agent of the Owner of the Goods and that he is authorised to accept and is accepting these Conditions not only for himself but also as agent for and on behalf of the Owner of the Goods.
- 6. 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 shall give sufficient and executable Instructions.
- 8. The Customer warrants that the description and particulars of the Goods are complete and accurate.
- 9. The Customer warrants that the Goods are properly packed, marked, labelled and stowed in a manner appropriate to any operations or transactions affecting the Goods and the characteristics of the Goods except where the Company has accepted instructions in respect of such services.

Special Instructions, Goods and services

- 10.** a. Unless otherwise previously agreed in writing, the Customer shall not deliver to the Company or cause the Company to deal with or handle Dangerous Goods.
- b. If the Customer is in breach of sub-clause (A) above he shall be liable for all loss or damage whatsoever caused by or to or in connection with the Goods howsoever arising. The Customer shall defend, indemnify and hold harmless the Company against all penalties, claims, damages, costs and expenses whatsoever arising in connection therewith and the goods may without notice be destroyed or otherwise dealt with at the sole discretion of the Company or any other person in whose custody they may be at the relevant time.
- c. If the Company agrees to accept Dangerous Goods and then, in the opinion of the Company or any other person, they constitute a risk to other goods, property, life or health they may without notice be destroyed or otherwise dealt with at the expense of the Customer or Owner.
- 11.** 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.
- 12.** 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.

- 13.** The Company shall not be obliged to make any declaration for the purposes of any statute, convention or contract as to the nature or value of any Goods, or as to any special interest in delivery unless express written instructions to that effect have been received and accepted by the Company.
- 14.** a. 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.
- b. The Company's liability resulting from such instructions relating to the delivery or release of the goods other than in writing shall not exceed that provided for in respect of mis-delivery 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, whether or not any such delay is caused by the negligence of the Company and/or its servants or agents.

General Indemnities

- 16.** a. The Customer and Owner shall defend, indemnify and hold harmless the Company against all liability, loss, damage, costs and expenses arising:
- i) from the nature of the goods unless caused by the Company's negligence,
 - ii) out of the Company acting in accordance with the Customer's or Owner's instructions, or
 - iii) from a breach of warranty or obligation by the Customer or arising from the negligence of the Customer or Owner.
- b. 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 levied by an Authority in respect of the Goods, Dangerous Goods and/or Container and for all liabilities, payments, fines, costs, expenses, loss and damage whatsoever incurred or sustained by the Company in connection therewith.
- c. 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.

- d. i) The Customer undertakes that no claim be made against any servant, sub-contractor or agent of the Company which imposes or attempts to impose upon any of them any liability whatsoever in connection with the Goods, if any such claim should nevertheless be made, to indemnify and hold harmless the Company against all consequences thereof.
- ii) Without prejudice to the foregoing, every such servant sub-contractor or agent 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 his behalf but as agent and trustee for such servants, sub-contractors and agents.
- iii) 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, sub-contractors and agents.
- iv) In this clause, "sub-contractors" includes direct and indirect sub-contractors and their respective servants and agents.
- e. The Customer shall be liable for the loss, damage, contamination, soiling, detention or demurrage before, during and after the Carriage of property (including, but not limited to, Containers) of the Company or any person or vessel referred to in (D) above caused by the Customer or Owner or any person acting on behalf of either of them or for which the Customer is otherwise responsible.

Charges, etc.

- 17.** 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 the Late Payment of Commercial Debts (Interest) Act 1998, at 8% above the prevailing Official Dealing Rate of the Bank of England during the period that such amounts are overdue.

Liberties and Rights of Company

- 18.** The Company shall be entitled, except insofar as has been otherwise agreed in writing, to enter into contracts, on any terms whatsoever, on behalf of itself or the Customer and without notice to the Customer
- a. for the carriage of Goods by any route, means or person,
 - b. for the carriage of Goods of any description whether containerised or not on or under the deck of any vessel,
 - c. for the storage, packing, transshipment, loading, unloading or handling of Goods by any person at any place whether on shore or afloat and for any length of time,
 - d. for the carriage or storage of Goods in containers or with other goods of whatever nature,
 - e. for the performance of its own obligations,
- and to do such acts as in the opinion of the Company may be necessary or incidental to the performance of the Company's obligations.
- 19.** a. The Company shall be entitled but under no obligation, to depart from the Customer's instructions in any respect if in the opinion of the Company there is good reason to do so in the Customer's interest and it shall not thereby incur any additional liability.
- b. The Company may at any time comply with the orders or recommendations given by any Authority. The responsibility of the Company in respect of the Goods shall cease on the delivery or other disposition of the Goods in accordance with such orders or recommendations.
- 20.** If at any time the performance of the Company's obligations, in the opinion of the Company or any person whose services the Company makes use of, is or is likely to be affected by any:
- (a) hindrance,
 - (b) risk,
 - (c) delay,
 - (d) difficulty, or
 - (e) disadvantage whatsoever

and which cannot be avoided by reasonable endeavours by the Company or such other person, the Company may, on giving notice in writing to the Customer or Owner or without notice where it is not reasonably possible to give such notice, treat the performance of its obligations as terminated and place the Goods or any part of them at the Customer or Owner's disposal at any place which the Company may deem safe and convenient,

whereupon the responsibility of the Company in respect of the Goods shall cease. The Customer shall be responsible for any additional costs of carriage to, and delivery and storage at, such place and all other expenses incurred by the Company.

- 21.** If the Customer or Owner does not take delivery of the Goods or any part thereof at the time and place when and where the Company, or any person whose services the Company makes use of, is entitled to call upon the Customer or Owner to take delivery thereof, the Company or such other person shall be entitled, without further notice, to store the Goods or any part of the Goods in the open or under cover at the sole risk and expense of the Customer. Such storage shall constitute delivery of the Goods and the liability of the Company shall wholly cease.
- 22.** Notwithstanding clauses 20 and 21, the Company shall be entitled, but under no obligation, at the expense of the Customer payable on demand and without any liability to the Customer and Owner, to sell or dispose of
- a. on giving 21 days notice in writing to the Customer all Goods which in the opinion of the Company cannot be delivered as instructed, and
 - b. without notice Goods which have perished, deteriorated or altered, or are liable to do so, in a manner which has caused or may be reasonably expected to cause loss or damage to any person or property or to contravene applicable regulations or requirements.
- 23.** a. The Company shall have a particular and general lien on all Goods and/or documents relating to Goods 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 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 and/or documents. If on the sale of the Goods 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 and documents by public auction or private treaty, without notice to the Customer or Owner and at the Customer's and/or Owner's expense and without any liability towards the Customer or Owner.

- 24.** The Company shall be entitled to retain and be paid all brokerages, commissions, allowances and other remunerations customarily retained by or paid to freight forwarders.
- 25.** The Company shall have the right to enforce against the Owner and the Customer jointly and severally any liability of the Customer under these Conditions or to recover from them any sums to be paid by the Customer, which upon demand have not been paid.

Containers

- 26.** a. If a Container has been packed or stuffed by or on behalf of the Customer, the Company shall not be liable for loss of or damage to the Goods if:
- i) caused by the manner in which the Container has been packed or stuffed,
 - ii) caused by the unsuitability of the contents for carriage in the Container actually used, unless the Company has approved the suitability.
 - iii) caused by the unsuitability or defective condition of the Container actually used provided that where the Container has been supplied by or on behalf of the Company this paragraph (iii) shall only apply if the unsuitability or defective condition:
 - (a) was not caused by negligence on the part of the Company, or
 - (b) would have been apparent upon reasonable inspection by the Customer or Owner or person acting on behalf of either of them at or prior to the time when the Container was packed or stuffed.
 - iv) the Container is not sealed at the commencement of the Carriage except where the Company has agreed to seal the Container.
- b. The Customer shall defend, indemnify and hold harmless the Company against any claim, liability, loss, damage, costs and expenses arising from one or more of the matters covered in (A) above.
- c. Where the Company is instructed to provide a Container, in the absence of a written request to the contrary accepted by the Company, the Company is not obliged to provide a Container of any particular type or quality.

General Liability

- 27.** a. Except insofar as otherwise provided by these Conditions, the Company shall not be liable for any loss or damage whatsoever arising from:
- i) the act or omission of the Customer or Owner or any person acting on their behalf,
 - ii) compliance with the instructions given to the Company by the Customer, Owner or any other person entitled to give them,
 - iii) insufficiency of the packing or labelling of the Goods except where such service has been provided by the Company,

- iv) handling, loading, stowage or unloading of the Goods by the Customer or Owner or any person acting on their behalf,
 - v) inherent vice of the Goods,
 - vi) riots, civil commotions, strikes, lockouts, stoppage or restraint of labour from whatsoever cause,
 - vii) fire, flood or storm, or
 - viii) any cause which the Company could not avoid and the consequences whereof it could not prevent by the exercise of reasonable diligence.
- b. Where under sub-clause (A) above the Company is not under any liability for loss or damage caused by one or more of the causes, events or occurrence above, the Company shall only be liable to the extent that the causes, events or occurrences for which he is liable under these Conditions have contributed to the loss or damage. The burden of proof that the loss or damage was due to one or more of the causes, events or occurrences specified in sub-clause (A) above shall rest upon the company, save that when the Company establishes that in the circumstances of the case, the loss or damage could be attributed to one or more of the causes, events or occurrences specified in (iii) to (vi) of sub-clause (A), it shall be presumed that it was so caused. The Customer shall, however, be entitled to prove that the loss or damage was not in fact caused wholly or partly by one of the causes, events or occurrences listed under sub-clause (A).
- c. The Company shall not be liable for loss or damage to property other than the Goods themselves howsoever caused.
- d. Subject to clause 15, the Company shall not be liable for economic loss in any form, such as indirect or consequential loss or damage, loss of profit, delay, deviation, howsoever caused.

Amount of Compensation

28. Except in so far as otherwise provided by these Conditions, the liability of the Company, howsoever arising, and notwithstanding that the cause of loss or damage be unexplained shall not exceed the following:
- a. in respect of all claims other than those subject to the provisions of sub-clause (B) below, whichever is the least of
 - i) the value of, or
 - ii) USD2.00 per gross kilogram of,
 the Goods lost, damaged, misdirected, mis-delivered or in respect of which a claim arises.
 - b. In respect of claims for delay where not excluded by the provisions of these Conditions, the amount of the Company's charges in respect of the Goods delayed.

29. a. Compensation shall be calculated by reference to the ex works invoice value of the Goods plus Carriage charges and insurance if paid.
- b. If there be no invoice value for the Goods, the compensation shall be calculated by reference to the value of such Goods at the place and time when they are delivered to the Customer or Owner or should have been so delivered. The value of the Goods shall be fixed according to the current market price, or, if there be no commodity exchange price or current market price, by reference to the normal value of goods of the same kind and quality.
30. By special agreement in writing and on payment of additional charges, higher compensation may be claimed from the Company not exceeding the value of the Goods or the agreed value, whichever is the lesser.

Notice of Loss, Time Bar

31. a. The Company shall be discharged of all liability unless:
- 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,
- otherwise any claim shall be deemed to be waived and absolutely barred.
- b. The dates referred to at (A) above are:
- 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.

General Average

32. The Customer shall defend, indemnify and hold harmless the Company in respect of any claims for General Average contribution that may be made on the Company, irrespective of whether the carriage charges are pre-paid or not. The Customer shall provide such security as may be required by the Company for General Average contributions promptly and in a form acceptable to the Company.

Miscellaneous

- 33.** 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.
- 34.** 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.
- 35.** 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 over-ridden to that extent and no further.
- 36.** Headings of clauses or groups of clauses in these Conditions are for indicative purposes only.
- 37.** Should any clause, or part of a clause, be found to be void or unenforceable, the remainder of that clause or section of the contract shall remain unaffected

Jurisdiction and Law

- 38.** These Conditions and any claim or dispute arising out of or in connection with the services of the Company shall be subject to California law and the exclusive jurisdiction of the Los Angeles County, California Courts.

Part II: Company as agent

Special Liability and Indemnity Conditions

- 39.** a. To the extent that the Company acts as an agent, the Company does not make or purport to make any contract with the Customer for the carriage, storage or handling of the Goods nor for any other physical service in relation to them and acts solely on behalf of the Customer in securing such services by establishing contracts with third parties so that direct contractual relationships are established between the Customer and such third parties.
- b. The Company shall not be liable for the acts and omissions of such third parties referred to in sub-clause (A) above.
- 40.** a. The Company when acting as an agent has the authority of the Customer to enter into contracts on the Customer's behalf and to do such acts so as to bind the Customer by such contracts and acts in all respects notwithstanding any departure from the Customer's instructions.
- 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 39.

Choice of Rates

- 41.** Where there is a choice of rates according to the extent or degree of liability assumed by persons carrying, storing, handling the Goods, no declaration of value where optional will be made unless otherwise agreed in writing.

Part III: Company as principal

Special Liability Conditions

- 42.** To the extent that the Company contracts as principal for the performance of the Customer's instructions, the Company undertakes to perform or in its own name to procure the performances of the Customer's instructions and subject to the provisions of these Conditions shall be liable for the loss of or damage to the Goods occurring from the time that the Goods are taken into its charge until the time of delivery.
- 43.** Notwithstanding other provisions in these Conditions, if it can be proved where the loss of or damage to the Goods occurred, the Company's liability shall be determined by the provisions contained in any international convention or national law, the provisions of which
- a. cannot be departed from by private contract, to the detriment of the claimant, and
 - b. would have applied if the claimant had made a separate and direct contract with the actual provider of the particular service in respect of that service or stage of carriage where the loss or damage occurred and received as evidence thereof any particular document which must be issued if such international convention or national law shall apply.
- 44.** Notwithstanding other provisions in these Conditions, if it can be proved that the loss of or damage to the Goods occurred at sea or inland waterway and the provisions of clause 43 do not apply, the Company's liability shall be determined by the Hague Rules. Reference in the Hague Rules to carriage by sea shall be deemed to include reference to carriage by inland waterways and the Hague Rules shall be construed accordingly.
- 45.** Notwithstanding the provisions of clause 44 if the loss of or damage to the Goods occurred at sea or on inland waterways, and the Owner, Charterer or operator of the vessel establishes a limitation fund, the liability of the Company shall be limited to the proportion of the said limitation fund allocated to the Goods.
- 46.** Air Carriage

If the Company acts as a principal in respect of a carriage of Goods by air, the following notice is hereby given:

If the carriage involves an ultimate destination or stop in a country other than the country of departure, the Warsaw Convention may be applicable and the Convention governs and in most cases limits the liability of carriers in respect of loss of or damage to cargo. Agreed stopping places are those places (other than the places of departure and destination) shown under requested routing and/or those places shown in carriers' timetables as scheduled stopping places for the route. The address of the first carrier is the airport of departure.

47. Both to Blame Collision Clause

The current Both-to-Blame Collision Clause as adopted by BIMCO is incorporated in these conditions.

CONDITIONS FOR USE BY FREIGHT FORWARDERS

Notes on The Completion of Through Transport

Note 1: (Clause 2)

If the Company undertakes and sub-contracts storage of goods, it is probable that the sub-contractor will be accepting a lower limitation of liability than that provided for in these conditions. If the Company undertakes a significant amount of such storage, it is suggested that the Company does so on the contractual conditions commonly adopted and therefore sub-clause 2(B) should be amended to read as set out below. If the Company operates outside the UK, reference to N.A.W.K. should be replaced by the applicable conditions in use in the country of the jurisdiction clause or the country where the company predominantly undertakes storage, unless of course such conditions are more onerous than series 400 conditions.

“b. The following provisions shall be paramount in so far as such provisions are inconsistent with these Conditions:

- i) the provisions embodied in a document bearing a title of or including “bill of lading” (whether or not negotiable) or “waybill” where such documents is issued by or on behalf of the Company and provides that the Company contracts as carrier,
- ii) to the extent that the Company acts as principal in respect of the storage of goods (whether short or long term), the current conditions of contract of the National Association of Warehouse Keepers (NAWK), a copy of which may be obtained on written request to the Company”.

Note 2: (Clause 17 C)

This clause expresses the method of calculating interest for late payments in accordance with English law. Forwarders that operate, or have their principle place of business, out side of the United Kingdom, will need to replace this clause with more suitable wording that applies and will stand the test in court in your country. An example of such a clause could be:

“On all amounts overdue to the Company, the Company shall be entitled to interest, calculated at 8% above the prevailing Base Rate of the (name of national bank) during the period that such amounts are overdue.”

Note 3: (Clause 28 (A) (ii))

Insert the value of the limitation in the blank space. Suggested limitations are: US\$2.00, or SDR2.00. The desirable amount will depend on the amount normally acceptable in the Company’s geographical area of trade and the amount that he is likely to obtain from a sub-contractor. If SDR is used it will be necessary for clause 28 to be amended to read as follows:

“28. Except in so far as otherwise provided by these Conditions, the liability of the Company, howsoever arising, and notwithstanding that the cause of loss or damage to unexplained exceed the following:

- a. in respect of all claims other than those subject to the provisions of sub clause c. below, whichever is the least of
 - i) the value of, or
 - ii 2 Special Drawing Rights (SDRs) per gross kilogram of, the Goods lost, damaged, misdirected, misdelivered or in respect of which a claim arises
- b. The SDR shall be 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.
- c. In respect of claims for delay where not excluded by provisions of these Conditions, the amount of the Company's charges in respect of the Goods delayed.

Note 4: (Clause 38)

Insert in the blank space the name of the country or, where applicable, the name of the district.

Note 5:

If the Member may be a principal in respect of U.S. or Canadian Trade and does not issue a bill of lading or waybill, it is suggested that an additional clause 48 be inserted as follows:

"48. U.S.A./Canada Clause

- a. With respect to the transportation within U.S.A., the responsibility of the Company shall be to procure transportation by carriers (one or more) and such transportation shall be subject to such carrier's contracts and tariffs and any law compulsorily applicable. The Company guarantees the fulfilment of such carrier's obligations under their contracts and tariffs.
- b. If and to the extent that the provisions of the Harter Act of the U.S.A. 1893 would otherwise be compulsorily applicable to regulate the Company's responsibility for the Goods during any period prior to loading on or after discharge from the vessel on which the Goods are to be or have been carried, the Company's responsibility shall instead be determined by the provisions of these Conditions, but if such provisions are found to invalid such responsibility shall be determined by the provisions in the Carriage of Goods by Sea Act of the U.S.A. approved 1936."

Note 6:

Where a Member trades in Africa, Australia or any other place where it is customary for road hauliers or railways not to accept a level of liability similar to that provided in clauses 27 and 28, it is suggested that, after clause 41, a new clause 42 be inserted. This would result, of course, in the current clauses 42 to 47 being renumbered clauses 43 to 48.

The new clause 42 would be what is commonly called a "switch-back clause" and can apply generally or to a particular geographical area. The purpose of such a clause is to attempt to limit the Member's liability to that which he can recover from his sub-contractor, where it can be established which sub-contractor is at fault. The disadvantage with such a clause is that the

Member's customer cannot, in such a situation, predict the level of recovery from the Member, as this will depend on the sub-contractor's contractual conditions; therefore such a clause may not always be acceptable to the Member's customer.

The wording is as follows:

"42. Where the Company contracts as a principal and sub-contracts the performance of his services and it can be proved that the loss of or damage to or in respect of the Goods arose or was caused whilst the Goods were in the care or custody of the sub-contractor (if not of general application, insert here the words "in the continent of Africa", in the continent of Australasia" or such other applicable wording), the company shall have the full benefit of all rights, limitations and exclusions of liability available to such sub-contractor in the contract between the Company and such sub-contractor and in any law, statute or regulation and the liability of the company shall not exceed the amount recovered, if any, by the Company from such sub-contractor".

Note 7:

Where a Member undertakes container repair and maintenance, it is suggested that special conditions for this type of work be added.

Sub-clause 2(B) should be amended to read as follows:

- "b. The following provisions shall be paramount in so far as such provisions are inconsistent with these Conditions:
- i) the provisions embodied in a document bearing a title of or including "bill of lading" or "waybill" (whether or not negotiable) where such document is issued by or on behalf of the Company and provides that the Company contracts as a carrier.
 - ii) The provisions of Part IV of these Conditions, to the extent that the Company provides the services of cleaning, maintenance, repair or storage of Containers and ancillary services connected therewith".

and a new Part IV be added as follows:

Part IV: Company providing services for cleaning, maintenance, repair or storage of containers and any services connected therewith

- 48.** Subject to clause 35 above, the Company shall not be liable for any improper performance or non performance of its Services, or the consequence arising therefrom, except to the extent provided in this Part IV.
- 49.** 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 sold option, 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 or Owner to exercise this option, the Company shall not be liable for any costs incurred by the Customer or Owner in rectifying such services.
- 50.** The Customer and Owner undertake to inspect the Container on redelivery to the Customer or Owner or person acting on their behalf. The Company shall not be liable and the Customer and Owner shall defend, indemnify and hold harmless the Company against any loss, damage, liability, cost and expense in respect of or arising from an 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.
- 51.** The Company shall be discharged of all liability unless:
- i) notice of any claim is received by the Company in writing within 14 days, and
 - ii) suit is brought in the proper form and written notice thereof received by the Company within 9 months after the date of redelivery of the Container to the Customer or Owner or person acting on their behalf".