



KONTENA NASIONAL BERHAD

(11065-T)

**CONDITIONS OF
CARRIAGE**

**CONDITIONS OF
TARIFFS FOR
CONTAINER HAULAGE**

**CONDITIONS OF
STORAGE AND
DEPOT**



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**CONDITIONS OF CARRIAGE
KONTENA NASIONAL BERHAD (11065-T)**

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**CONDITIONS OF CARRIAGE
&
CONDITIONS OF TARIFFS FOR
CONTAINER HAULAGE (page 28)**

THESE CONDITIONS OF CARRIAGE CONSTITUTE A BINDING CONTRACT WITH ALL CUSTOMERS ON WHOSE BEHALF THE CARRIER PROVIDES A SERVICE.

NOW THE PARTIES TO THESE CONDITIONS OF CARRIAGE WITNESSETH AS FOLLOWS :

ARTICLE I

DEFINITION

'Acknowledgement of Receipt' means the official Acknowledgment of Receipt issued by the Carrier or any other form of the same be it oral, conduct, acquiescence or otherwise including any form of 'Notification of Delivery' or the endorsement or franking on the Consignment Note which signify legal acceptance by the Carrier to the offer tendered by the Customer for contract purposes.

'Added Term' means the new request or counter-offer by the Customer to do certain tasks or jobs post RFD or the Consignment Note which has been accepted by the Carrier either orally, written or by conduct as enumerated in **Article VII** of this Contract herein.

'Carrier' means Kontena Nasional Berhad, appointed subsidiaries, successors in title and permitted assigns.

'Company' means firm, company, association, consortium, Government Authority, corporation or any society therein.

'Computer Data Interchange Program' means the computerised data-interchange program with the Port Authority or any Terminal Operator or any other form of software program of like nature whereby information on the details and movements of cargo are transmitted via the computer system of the Port or Terminal Operator or any other party to the Carrier for the purpose of facilitating cargo movements and other logistical matters.

'Conditions of Carriage' means Contract.

'Consignment Note' means the Delivery Order consisting of several documents to be signed by the Customer or the Carrier during the Performance of the Contract.

'Containers' mean any container, flexitank, transportable tank, flat or pallets which correspond to the standards of International Standard Organisation (ISO) or Industrial Institute of Malaysia (SIRIM) thereof.

'Customer' or **'Customers'** means persons or body corporate, corporation, statutory bodies and other third parties who have either legal, beneficial ownership or both or any kind of ownership in equity or at law, possessor control or lien over the Goods and whom offer to use the Service in the form of RFD which is accepted by the Carrier in the form of Acknowledgement of Receipt or via the Consignment Note which is endorsed by the franking method of the same or whom entered into the Contract with the Carrier. **'Customer'** or **'Customers'** can also be any person who is an agent or principal of the Customer by definition of Common Law, any persons who have apparent and ostensible authority to act on behalf of the Customer, principal or agent of the same and any other third parties. **'Third parties'** may also be the party who deals with Unauthorised Transaction within the meaning of this Contract.

'Dangerous Goods' means any goods that are of a dangerous, inflammable, radioactive or damaging in nature either to itself or other property or persons including firearms, ammunitions and explosives, goods so dangerously packed that may encourage the habitation of other animals, micro-organisms or fungi or likely to involve detention to itself or persons or any property, effect hindrance in any manner whatsoever to the Performance of the Contract or any other third party contract in which the Carrier is a party, **'Dangerous goods'** classified by the International Maritime Organisation (IMO) or any other laws, bye-laws or regulations enforced in Malaysia or internationally.

'Excepted Goods' means livestock, furs, watches, precious metals and stones, Treasury Notes, gold bullion or ingots, cash in any currency, bonds, deeds, stamps, securities, manuscripts, paintings, documents, safety razor blades, cigarettes lighters, bottled perfumery, tobacco, cigars, cigarettes, bottled wines, liquors, liqueurs, spirits and the like.

'Force Majeure' means an event not within the control of the Carrier and has a direct or indirect effect on the Carrier's obligations in the Performance of this Contract; events which it is unable to prevent, avoid or remove and shall include war whether declared or not, hostilities, invasion, armed conflict, act of foreign enemy, riot, insurrection, strikes, resolution, act of terrorism, sabotage or criminal

damage, natural disasters including earthquakes, lightning, volcanic eruptions, hurricanes, tempest, fires and floods.

'Fragile Goods' means any goods of fragile or brittle nature having an inherent likelihood or propensity to break or change its appearance or chemical constituent; be reduced in its value or consumers confidence from any point of view, perception or aesthetics; glass, fine bone china, metals, paintings, pictures; goods with inherent defect or vice, goods that are not favourable to packing or packaging, human or machine handling or interference or transportation purposes.

'Free Storage Period' means the five (05) days storage period or any prevailing storage period in the future wherein by virtue of any bye-laws of the Port Authority or Governmental regulations, Terminal Operator or otherwise there shall be no charges imposed for storage of Containers therein. Where Containers are not cleared after the expiry of the Free Storage Period there shall be Store Rent charges imposed before clearance of the same is effected.

'Goods' means any goods or consignment within the definition of this Contract and within the Contract period and whenever appropriate it is also used to mean non-containerised Goods as opposed to Containerised Goods.

'goods' means any goods or consignment in the literal and general sense.

'Goods in Transit' means Goods or Containerised Goods within the duration of the Contract.

'Government' means the Government of Malaysia and shall include the Secretary General, Ministry of Finance, its statutory bodies, Governmental institutions and its duly appointed representative.

'Haulage' means the transportation of containerised or non-containerised Goods whenever appropriate depending on the construction of the sentence.

'Kontena Nasional Berhad Tariffs for Container Haulage' means a published list of tariffs by the Carrier from time to time relating to the transportation of Containerised Goods thereto.

'Obnoxious Goods' means any substance which causes discomfort or adversely affect human interference or handling, taint other Goods, containers or packaging or damage them chemically or physically; any deliquescent cargo which draws in moisture from the air or its surrounding, any cargo that is moist or in a wet condition; cargo that is liable to infestation by insects, mites, weevil, grubs or the like requiring fumigation; any cargo of liquid or semi liquid nature that has the propensity to liquidate with a change in temperature and any other cargo deemed obnoxious at law.

'Party' or 'Parties' means any party to these Conditions of Carriage being the Carrier and the Customer or both or any other third party not bound by this Contract depending on the construction of the sentence.

'Performance of the Contract' or 'performance' means the duties and obligation of the parties to this Contract.

'Request for Delivery' or 'RFD' means the **legally valid offer** from the Customer to the Carrier for the latter to carry out the Service; this offer is made by means of a written Request for Delivery or in a specified format or forms to be filled by the former, the Carrier's Consignment Note, by oral requests, telex or facsimile transmission or in accordance with the customs of trade practised by the Carrier and thereby communicated to the same.

'Service' means the inland transportation of Goods or Containerised Goods within or outside Malaysia or otherwise and any other considerations to this Contract.

'Unauthorised Transaction' means the Unauthorised Transaction as defined in **Article XIX** of this Contract or any transaction either partially or in full which is similar or mirrors the kind of transaction that is authorised by the Carrier in this Contract or performance of the same; the former transaction which is done or carried out by anyone including the Carrier's own employees without reasonable or material knowledge of the same or any other parties or persons whom fraudulently act or purport to act on behalf of and without any authorization of the Carrier.

ARTICLE II

CONDITIONS OF CARRIAGE

i. These Conditions of Carriage came into force on June 1, 2000 and shall supersede all previous Conditions of Carriage.

ii. This Contract is binding on the Carrier and the Customer the moment there is acceptance by the Carrier to perform its obligation to haul, transport, store the Containers or Goods in Transit and deliver thereto; the above tasks in whatever permutation in accordance with the request by the Customer in the RFD which is agreed thereby in the form of an Acknowledgement of Receipt or via the Consignment Note which is endorsed by the franking method or in accordance with the discretion of the Carrier in the best interest of both parties to this Contract; the obligation which is terminated once the Performance of the Contract has been executed and carried out therein.

ARTICLE III

TARIFFS AND CHARGES

i. 'Kontena Nasional Berhad Conditions of Tariffs for Container Haulage' and 'Kontena Nasional Berhad Tariffs for Container Haulage' are herein incorporated in the Contract.

ii. The charges for the transportation of non-containerised Goods are discretionary and not in the form of Tariffs; the former imposed by the Carrier based on the Service agreed between the parties, nature of cargo and distance of journey involved and all other considerations customary in the trade of the same.

ARTICLE IV

PAYMENT OF TARIFFS AND CHARGES

i. The payment of the Tariffs and charges which is the consideration for the Service rendered by the Carrier to the Customer shall be paid immediately by the latter after the Acknowledgement of Receipt is produced by the former. However if the Customer has been granted a Credit Facility arrangement with the Carrier, payment is to be made within the specified period stated in the Credit Facility.

ii. Both parties to this Contract agree that the terms and conditions of the Credit Facility are an integral part of this Contract and the Carrier reserve its rights to amend the said terms and conditions from time to time with prior written notice to the Customer.

ARTICLE V

INVOICES

By virtue of this Contract, the Customer is given fourteen (14) days grace period to dispute any invoices billed to the former by the Carrier in written form failing which all invoices are deemed as final and conclusive evidence of the acceptance of the Customer of its indebtedness to the Carrier in the amount stated.

ARTICLE VI

DURATION OF CONDITIONS OF CARRIAGE

The Carrier may at any time alter, amend or revoke any or all provisions, articles or statements of these Conditions of Carriage, subject to the provision of written notice to the Customer.

ARTICLE VII

ADDED TERM OF CONTRACT

i. In the event that the Customer give instructions to the Carrier to carry out tasks or jobs that are contrary to the Contract, the RFD or the Consignment Note; the Carrier on receiving this instruction acquiesces in the same by carrying out those task or jobs as if it is an Added Term to the Contract without prejudice to its rights as a service provider and that of the Customer for the same added service. Where there is another term or articles in the original Contract that is inconsistent with the Added Term, the original term shall be amended or considered void by the Carrier if it produces hardship, economic loss and or damage to the former and other parties thereto.

ii. The Customer shall also bear the full responsibility to compensate the Carrier and other affected parties for any loss and or damage that accrues either directly or indirectly from the task or job done arising from the instructions given to the Carrier.

ARTICLE VIII
AMENDMENT AND REVOCATION

Both parties to this Contract may amend any terms of the Contract or revoke the same upon mutual agreement in writing.

ARTICLE IX
APPLICATION OF LAW

This Contract and all other agreements between the Carrier and the Customer shall be governed by the Laws of Malaysia and both parties irrevocably submit to the exclusive jurisdiction of the Courts of Malaysia.

ARTICLE X
SUB-CONTRACT

The Carrier reserve its rights to employ the service of any other carrier, haulage operator and third parties in the Performance of the Contract without notice to the Customer. For the purpose of this Contract, all rights and obligation of the other carrier, haulage operator and third parties are deemed as the 'immediate parties' to the Contract with the Customer. However under no circumstances shall the situation be construed that the Carrier is liable for the acts, omissions and obligations of these 'immediate parties' and the Carrier is not jointly or severally liable for the immediate parties acts, omissions or obligations under the Contract whatsoever.

ARTICLE XI
RIGHTS OF THE CARRIER AND LIABILITY OF CUSTOMER

The **rights of the Carrier** over the Customer in the form of a legal action or otherwise and the **liabilities of the Customer** as per this Contract or by operation of the Common Law and the Law of Equity shall remain notwithstanding the **Limitation Act 1953** thereof.

ARTICLE XII

FORCE MAJEURE

i. The Carrier is not liable for the Performance of the Contract if it is unable to perform its obligation or effect Termination of the Contract due to an event of Force Majeure. In the event of the same, the Customer shall endeavour to help the Carrier in whatever ways to mitigate any effect that the same might have on the Performance of the Contract of both parties.

ii. In the event of Force Majeure, any total or partial loss or damage to the Goods or Containers is the liability of the Customer and the Carrier shall not be responsible for any claims either from the Customer or any other third party for the loss or damage therein.

ARTICLE XIII

IMPOSSIBILITY OF PERFORMANCE

The Carrier shall be relieved from its obligation to perform the Contract to the extent that the performance of the same is prevented by failure of the Customer, events of Force Majeure, weather conditions or cause beyond the reasonable control of the Carrier.

ARTICLE XIV

LIABILITY FOR LOSS OR DAMAGE

Without prejudice to the generality of all other Articles in this Contract, the Carrier is not liable for any loss or damage to the Goods or Containers if it is found that the Customer has breached any articles of the same or any oral or written promise or undertaking, any cause or events which the Carrier could not avoid or be prevented by the exercise of reasonable diligence; seizure or forfeiture under legal process; error, act, omission, misstatement or misrepresentation by the Customer or other owner of the Goods or Containers or by servants or agents of either of them; the wrongful act or neglect of the Customer; inherent liability to wastage in bulk or weight, latent defect, inherent defect, vice or natural deterioration of the Goods or Containers; any handling, loading, unloading or storage by the Customer or its agents; insufficient or improper packing; insufficient or improper labelling or addressing; Customer or any consignee not taking or accepting delivery within a reasonable time after the Goods or

Containers have been tendered and finally the loss or damage resulting from the 'Added Term' of the Contract as specified in **Article VII** therein.

ARTICLE XV

LIMIT OF LIABILITY

- i. The Carrier's limit of liability under this Contract and any other laws, regulations, statutory enactments and bye-laws either locally or internationally pertaining to any matter relevant to the goods, obligations and duties of the Carrier shall not exceed Malaysian Ringgit RM3.00 (Malaysian Three Ringgit) per kilogram of gross weight of Goods lost or damaged during the Performance of the Contract. If the gross weight of Goods declared to the Carrier is lower than the actual gross weight of the same, compensation shall only correspond to the gross weight of Goods lost or damaged declared and not the actual gross weight of the same.
- ii. In the reverse event where the gross weight of Goods declared is higher than the actual gross weight of the same, compensation shall only correspond to the actual gross weight of the Goods lost or damaged therein.
- iii. The Carrier reserves its full discretion in making compensation only to deserving cases and the Malaysian Ringgit RM3.00 compensation per gross weight in kilogram of Goods lost or damaged is not the fixed value to be computed, rather it only serves as a ceiling on the maximum amount of Ringgit per kilogram to be applied where the Customer is able to prove liability.
- iv. Customers whom do not declare the gross weight of Goods to the Carrier run the risk of non-compensation by the Carrier notwithstanding that the claim on the Goods lost or damaged is material for settlement purposes.
- v. By virtue of this Contract it is hereby declared that in any one claim deserving of compensation shall not exceed the Malaysian Ringgit RM100,000.00 (Malaysian One Hundred Thousand Ringgit) and it is incumbent on the Customer to have an insurance placement over Goods and Containers on their own account.
- vi. It is expressly agreed that in any one claim deserving of compensation shall not exceed the actual value of the Goods lost or damaged, failing which the computation of Malaysian Ringgit RM3.00 shall not apply but only the actual value of the Goods lost or damaged taking into account the current market value

of the Goods, depreciation and other relevant considerations thereto.

vii. The Customer shall be entitled at any time before the commencement of Transit to give seven (07) days written notice to the Carrier requiring that the aforesaid RM3.00 (Malaysian Three Ringgit) per kilogram of gross weight be increased but not so as to exceed the value of the Goods and in the event of such notice being given the Carrier shall within the said seven (07) days exercise its discretion to accept the same or to reach a common mutual agreement with the latter in consideration of the increased limit.

ARTICLE XVI

COMPENSATION CLAIMS

i. In the event of any incident of loss or damage of Goods or Containers or any incidents leading to a reasonable inference of the same, the Customer shall **immediately inform** the Carrier of such incidences within twenty four (24) hours from the time of occurrence of the same, failing which the Carrier reserves the right to reject any claim under this Contract.

ii. All formal claims by the Customer must be made within fourteen (14) days from the date of any incidents giving rise to the same or the date the Performance of the Contract was effected or the date where both parties to the Contract have stopped carrying out their obligation to the same therein.

ii. The **right to claim** for compensation is revoked if it is made after the fourteen (14) day time limit has expired.

ARTICLE XVII

INDEMNITY

Without prejudice to the other Articles of this Contract, the Customer shall indemnify the Carrier against all consequences suffered by the Carrier (including but not limited to claims, demands, proceedings, fines, penalties, damages, costs, expenses and loss of or damage to the carrying vehicle, Containers and to other Goods carried) of any error, omission, misstatement or misrepresentation by the Customer or other owner of the Goods or Containers by any servant or agent of either of them; insufficient or improper packing, labelling or addressing of the Goods or fraud as in **Article XX** therein; all claims and demands whatever

by whoever made in excess of the liability of the Carrier under these Articles; all losses suffered by and claims made against the Carrier in consequence of loss of or damage to property caused by or arising out of the Carrier under this Contract; and claims made upon the Carrier by The Royal Customs and Excise Department in respect of dutiable Goods consigned in bond whether or not Transit has ended or been suspended.

ARTICLE XVIII

INSURANCE

i. The Customer warrants to ensure that their Goods or Containers are insured under an insurance policy or policies against any event of loss and or damage from the commencement of the contractual obligations of both parties and for the full market value. The Carrier reserves its right not to have any insurance over the same. A copy of the Customers policy shall be available to the Carrier on demand and there shall be no entitlement of subrogation to the insurer of the Carrier or the Carrier in that policy.

ii. For the purpose of this Contract, 'commencement of contractual obligations' is effected at the time the Acknowledgement of Receipt is issued or the endorsement or franking is done on the Consignment Note by the Carrier or any other form of acceptance to the offer tendered by the Customer at law.

ARTICLE XIX

ADHERENCE TO CONTRACT TERMS AND OTHER TERMS CUSTOMARY IN THE LOGISTICS OPERATION / UNAUTHORISED TRANSACTION

i. It is the responsibility of the Customer to ensure that proper procedures laid out in the Contract are adhered to, in particular the making of the offer via the filling in the details required in the RFD or the Consignment Note and the procurement of the official Acknowledgement of Receipt for the RFD and the endorsement or franking of the Consignment Note. Any transaction that do not conform to this and other requirements which is customary in the logistics operations of the Carrier or in the general logistics industry is an **Unauthorised Transaction** and the Carrier is not responsible for any loss and or damage either to the Goods or Containers, property of the Customer or any party, personal injury or death of persons arising from this Unauthorised Transaction.

ii. In the event that there is any loss, damage, injury or death to any employees or agents of the Carrier or third parties; the Customer warrants and undertakes to pay and compensate the same thereof.

ARTICLE XX

LIABILITY ARISING FROM FRAUD AND UNAUTHORISED TRANSACTION

The Carrier shall not in any circumstance be liable in respect of Goods or Containers where there has been **fraud** or **Unauthorised Transaction** on the part of or committed by the Customer or owner of the Goods or the servants or agents of either in respect of the same unless the fraud or Unauthorised Transaction has been contributed by or accomplished with the complicity the Carrier or any servant of the Carrier acting in the course of his employment.

ARTICLE XXI

WARRANTY AND UNDERTAKING

i. The Customer warrants that the description of the Goods in the RFD or the Consignment Note, its value, quantity, weight, measurement and all other particulars are true and correspond to the information contained in the packing list, invoice of Goods, Certificate of Origin, Bill of Lading, Air Way Bill and other documents tendered to the Port, Airport and Railway Authority or any Terminal Operators for marine, air, rail and land transportation in which the Carrier relies by means of these documents or via the Computer Data Interchange Program for information purposes.

ii. In the event that the above is not adhered to the Carrier reserves its full right to either terminate the Contract, temporarily suspend the Performance of the Contract, make a deviation of the route formally agreed, appoint third parties to effect any part of the Contract, execute a lien over the Goods or to sell the same or any part thereof in addition to payment and compensation in full by the Customer for whatever loss, damage or hardship caused to the Carrier, its servants, agents and third parties.

iii. It is a duty of the Customer to be continuously vigilant on the nature of information that they have supplied to the Carrier in the RFD, the Consignment Note and other logistical documents from third parties pertaining to the Goods and upon receiving information that the same is wrong, erroneous or fraudulent; the Customer shall make notification to the Carrier **as soon as possible**, failing

which the Carrier may invoke any combination of the rights enumerated in paragraph two (ii) of this Article, without waiver of an entitlement to a full indemnity.

ARTICLE XXII

REQUEST FOR DELIVERY (RFD) / CONSIGNMENT NOTE

i. The Carrier reserves its rights and full discretion to refuse any RFD or Consignment Note in particular goods that belong to the category of 'Dangerous Goods', 'Excepted Goods', 'Fragile Goods' and 'Obnoxious Goods'. Notwithstanding the same, the Carrier may also refuse any RFD or Consignment Note not related to these categories without any reasons whatsoever being given to the Customer.

ii. The Carrier may accept the RFD or Consignment Note of 'Dangerous Goods', 'Excepted Goods', 'Fragile Goods' upon a full and material disclosure of the nature of goods by the Customer in a form of a written declaration and on a special arrangement made either between the Carrier and the Customer or with third parties.

iii. For purpose of this Article and Goods belonging to 'Dangerous Goods', 'Excepted Goods', 'Fragile Goods' and 'Obnoxious Goods'; the Customer undertakes to compensate the Carrier or third parties for any loss and or damage resulting either directly or indirectly from the Performance of the Contract of the same notwithstanding that the direct causal effects are due to the Carrier or third parties the latter whom are either authorised or unauthorised, under employment or not under employment with the Carrier or the Customer.

ARTICLE XXIII

SECURITY AND INSURANCE FOR EXCEPTED, FRAGILE, DANGEROUS AND OBNOXIOUS GOODS

i. The Carrier is not responsible for the security or insurance of the Goods referred to in **Article XXII** and the Customer hereby warrants that he will obtain comprehensive policies of insurance and arrange for security during the Performance of the Contract therein at no cost to the Carrier.

ii. Notwithstanding the above however, the Carrier may provide or employ the security services of a Security Firm at an agreed rate with the Customer.

ARTICLE XXIV

TRANSPORTATION OF DANGEROUS GOODS

It is a duty of the Customer to label any packages or Containers carrying 'Dangerous Goods' and the carrying vehicle by means of symbols and affixed with a certification mark incorporating the appropriate United Nations logo, and the party that is to effect packing and packaging of the same shall do so in accordance with any statutory regulations for road or sea transport either locally or internationally.

ARTICLE XXV

PACKING AND PACKAGING OF GOODS FOR CONTAINERISED CARGO

i. The Carrier does not provide the service for the proper packing of Goods for transportation in Containers. It is a responsibility of the Customer to effect the same either by themselves or via third parties so that the Goods are safe for storage and transportation purposes. The Carrier is not liable to the loss or damage of Goods if it is found that the same is caused by the insufficiency of packaging materials or quality unsuitable for transportation purposes in a Container or storage for the same in transit or for the route that is used to effect the Performance of the Contract.

ii. The Customer must indemnify the Carrier in full should there be any loss or damage which is caused directly or indirectly from the packing and packaging of the Goods or Goods to the property of the Carrier or other third party property including transportation gears and vehicles, personnel and third parties and the Carrier shall not be liable to any third party claims or suits in the matter.

iii. The Carrier shall only effect the packing or supply packaging materials for Goods for containerised cargo upon a mutual agreement with the Customer in writing at an agreed rate.

ARTICLE XXVI

PACKING AND PACKAGING OF GOODS FOR NON-CONTAINERISED CARGO

i. The Carrier may provide the service of packing and packaging of Goods upon the specification or request of the Customer at an agreed rate. Unless otherwise instructed by the Customer, the Carrier shall only provide the crates, cases, lift vans, pallet or any other design of like nature with the customary build and quality requirements used by the Carrier. The Carrier shall not be liable for any defects or question on fitness for purpose that is over and above what is normally and customarily provided for by the Carrier and any loss or damage which is attributed to the packaging material or the way packing is done if there is no express declaration by the Customer on the nature of the Goods or any other information which is important for the Carrier to observe relating to packing and transportation purposes.

ii. Failure by the Customer to observe the requirements of paragraph one (i) of this Article shall render the Customer liable to any loss or damage which is caused directly or indirectly from the packing or packaging of Goods or Goods to the property of the Carrier or other third party Goods including transportation gears and vehicle, personnel and third parties, Goods belonging to third parties that have been consigned together on the same vehicle or in Containers for export purposes and all other third party claims and suits therein.

ARTICLE XXVII

DISCREPANCY ON THE NUMBER OF ITEMS OR GOODS IN CARTONS, BOXES, CASES, LIFTVANS, CONTAINERS

The Carrier is not responsible for any discrepancy in the weight, number of items or packages or Goods purported to be in cartons, boxes, cases, liftvans, Containers, 'palletized Goods' or any other type of packaging save for the information that is printed or written on the same or the information given by the Customer or its agents for the tallying of goods or the issuance of the 'Unpacking Lists For Surveyors' or any other documents of like nature.

ARTICLE XXVIII

LOADING AND UNLOADING

i. Where there are Goods to be collected from the Customer's premises or a Container to be delivered to the same, it is the duty and responsibility of the Customer to effect loading or unloading respectively in a safe manner by providing any man-power, labourers, equipments and machineries necessary to effect the same at no costs to the Carrier. Any assistance given by the Carrier or its personnel or third parties under the direction of the former shall be at the sole risk of the Customer and any loss or damage arising therefrom shall not be to the account of the Carrier.

ii. It is the responsibility of the Customer to make sure that proper adequate steps, machineries and precautions are utilised to effect loading or unloading for 'Excepted Goods', 'Dangerous Goods', 'Fragile Goods' and 'Obnoxious Goods' and any assistance given by the Carrier or its personnel at the request of the Customer are at the sole risk of the same with no liability on the Carrier for any loss or damage to Goods thereby arising. The Customer shall also indemnify the Carrier against any loss or damage legal or otherwise which the Carrier might suffer as a consequence of the above.

iii. The Carrier may at the request of the Customer provide labourers, special equipments and machineries for loading and unloading purposes at an agreed rate.

iv. The Carrier shall not be required to provide Service beyond the usual place of collection or delivery or at such a place stated in the RFD or the Consignment Note but if any such service is given by the Carrier it shall be at the sole risk of the Customer against all claims and demands whatsoever which could not have been made if such Service had not been given.

ARTICLE XXIX

CONSIGNMENT NOTE

The Carrier shall, if so required sign a Consignment Note or a document prepared by the Customer acknowledging the receipt of the Goods or Containers or nature of Goods, its quantity or weight but no such document shall be evidence of the condition or correctness of the declared nature, quantity or weight and other

particulars given to the Carrier, the RFD or the Carrier's Consignment Note at the time it is received by the Carrier.

ARTICLE XXX

CONTAINERS

i. It is the duty of the Customer to make sure that any Container provided is fit for the purpose it is required for and the Carrier is not liable for the unsuitability or defective condition of the Container which could not be reasonably foreseen by any reasonable haulage operator in the logistics industry.

ii. In the event that the Customer finds any defect or unsuitability of the Container in question or upon information from the shipping line company or any party thereof, it is a duty of the Customer to alert the Carrier within twenty four (24) hours of delivery of the Container to the former, failing which the Carrier may treat the Contract as terminated.

iii. The Carrier is equally not liable for the unsuitability or defective condition of any Container which condition is apparent upon reasonable inspection by the Customer at any time during the loading of Goods therein.

iv. The Customer undertakes that he will bring no claim against the Carrier for any loss whatsoever arising out of the transportation of their Goods in a defective or unsuitable Container and that he will indemnify the Carrier against any subrogated claim brought by insurers or any other party.

ARTICLE XXXI

STUFFING OF CONTAINERS

The Customer shall stuff the Container within the maximum weight limits pursuant to the Malaysian Government Regulations in force and the same shall be liable to all fines, detention or loss of revenue to the Carrier if this provision is breached and shall indemnify the Carrier against any losses arising.

ARTICLE XXXII

INSPECTION OF GOODS

The Carrier reserves the right at any time during the duration of the Contract to inspect the Goods in Containers or Goods therein without prior notification to the Customer.

ARTICLE XXXIII

GOODS IN TRANSIT

i. Goods in Transit means Goods or Containerised Goods. The duration of Transit differs in each circumstance and does not run at the time the Contract is formed. Transit shall commence when the Carrier takes physical possession of the Goods or Containerised Goods at the point of collection or delivery as stated in the RFD or the Consignment Note or upon agreement or instruction of the Customer therein. Depending on the nature of the Contract and as per this Article the Carrier may store Containerised Goods on trailers or in a transit yard at the Carrier's premises or any other locality; the same applies to Goods which may be stored at the warehouse or any other building deemed safe for storage purposes. Transit shall, unless previously determined end when Goods or Containerised Goods are delivered at the place of delivery or collection in the RFD or the Consignment Note or upon instructions of the Customer.

ii. Where it is not safe and there is no adequate access or unloading facilities there exist; Transit shall be deemed to end at the expiry of one (01) clear day after notice in writing of the arrival of the Consignment at the Carrier's premises has been sent to the Customer.

iii. Where for any reasons a Consignment cannot be delivered or the same is held by the Carrier 'to await order' or 'to be kept till called for' or upon any like instructions and such instructions are not given or the Consignment is not called and removed within one (01) clear day: then Transit shall be deemed to have ended.

ARTICLE XXXIV

DELIVERY OF CONTAINERS AND GOODS IN TRANSIT

i. The Carrier shall deliver the Containers or Goods in Transit to the address specified in the RFD or the Consignment Note or via any other instructions given post RFD or the Consignment Note in writing. However it is a duty of the Customer to make sure that there is a secure area at the location given to unload the Containers or Goods and should Carrier be given the instruction to leave the Container or Goods outside the location given (for example outside the gate or compound of the address given in the RFD or the Consignment Note or the instructions given post RFD or the Consignment Note), it is therefore no longer a responsibility of the Carrier over both the Container and the Goods and the Customer must indemnify the Carrier and third parties should any loss or damage arise from such an instruction.

ii. In the event that the Carrier is unable to deliver the Container or Goods due to the Customer's refusal to accept the same or the Customer not being present at the stated location to receive them, the Carrier may then have the Container or the Goods hauled back to the premises of the Carrier or any other transit point and the Customer has to submit a new RFD or Consignment Note for delivery and bear the costs of the futile trip made earlier.

iii. The Carrier may due to some unforeseeable circumstances effect delivery of the Container or Goods earlier or later than the agreed time in the RFD or the Consignment Note or the instruction given post RFD or the Consignment Note and the Customer shall accept this delivery if it is accomplished during the Customer's normal working hours.

ARTICLE XXXV

CLEARANCE OF CONTAINERS FROM THE PORTS

The Carrier undertakes to clear the Containers from the Ports within forty eight (48) hours of submission of all relevant papers and documentation from the freight forwarder or any third parties whom have undertaken to procure the same. These forty eight (48) hours do not apply if the relevant papers and documentation are given less than forty eight (48) hours before the commencement of the Store Rent or other charges thereto.

ARTICLE XXXVI

STORE RENT AND OTHER CHARGES

i. The Customer warrants and undertakes to settle and pay the amount of Store Rent and other charges if the relevant papers and documentation by any party are not forwarded to the Carrier at least forty eight (48) hours before the commencement of the same. It is therefore a duty and responsibility of the Customer to ensure that the relevant documentation is in order and relayed to the Carrier on time; this duty and responsibility is executed by the Customer professionally either on their own or through their appointed freight forwarder or agent or suppliers locally or internationally or any other third parties in the 'logistics paper-document' transactions. The Carrier shall not be responsible for the Store Rent or any other charges or costs.

ii. The Customer further warrants and undertake to settle and pay the amount of Store Rent or other charges where the Containers are detained by the order of the Government of Malaysia through its institutions and machineries thereof.

ARTICLE XXXVII

STORE RENT AND OTHER CHARGES THROUGH FAULT OF CARRIER

The Carrier is only liable for the Store Rent and other charges if the relevant documentation which are relevant and in proper order are forwarded and received by the Carrier at least forty eight (48) hours before the commencement of the same and that there are no situation or incidences which might lead the Carrier to find difficulty, be in hardship or terminate the Contract as per **Articles XII, XIII, XXII, XXXVI and XXXIV** of this Conditions of Carriage or any other Articles wherein the right of termination applies. In the event of this happening the Carrier undertake to pay the amount of the charges at no costs to the Customer.

ARTICLE XXXVIII

ELECTRICITY SHUTDOWN, COMPUTER MALFUNCTION, EVENTS OF FORCE MAJEURE

Where there are unexpected events outside the control of the Carrier such as electricity or computer shutdown or events constituting 'Force Majeure'; notwithstanding that the Customer has tendered the relevant documents on time to the Carrier for clearance purposes; the Carrier shall not be liable for any Store

Rent or other charges and the Customer by virtue of this Contract undertakes to be fully responsible for the same and pay the relevant amount to the Port, Airport or Railway Authority, bonded warehouses, Terminal Authority or any other Company thereof.

ARTICLE XXXIX

METHODS AND ROUTES OF TRANSPORTATION

The Carrier is at liberty at any time and without notice to the Customer to exercise his entitlement to deviate from the Contract in circumstance which in the Carrier's sole discretion is for the mutual interests of both parties by using any means of transport, deviate as to any route which may not be the nearest or most direct route to the destination in the Contract, load, unload or store the Goods at any such place and finally to comply with any orders, recommendations or regulations given by the Government of Malaysia.

ARTICLE XXXX

SHUT-OUT AND OVER-CARRIED CONTAINERISED GOODS OR GOODS

The Carrier is not responsible for delay or late arrival of Containerised Goods or Goods for export due to any reasons resulting in a subsequent 'shut-out' by vessel or discharge of the same for imports due to any reason resulting in the Containerised Goods or Goods being 'over-carried' or left on board the vessel to another destination or shipping port.

ARTICLE XXXXI

LOSS OR DAMAGE TO THE CARRIER OR THIRD PARTY EQUIPMENTS AND MACHINERIES IN CUSTODY OF CUSTOMER

Where at any point of the Contract; the equipments or machineries are left in the custody of the Customer or any third parties representing the same; any loss or damage to the equipments and machineries are therefore a liability of the Customer and the same has to make good any claims made by any party arising from the matter in question.

ARTICLE XXXXII

WARRANTY AND UNDERTAKING BY CUSTOMER TO COMPLY WITH ALL REGULATIONS AND REQUIREMENTS

The Customer warrants and undertake to comply with all regulations and requirements of the Royal Customs and Excise Department, Port Authorities and any other Authority, Terminal Operators, organisations or companies and shall bear and pay all duties, taxes, imports, fines, imports, expenses or losses suffered by the Carrier, its agents or any other third party due to the insufficiency of marking, numbering and defining the Goods or Containers therein.

ARTICLE XXXXIII

GENERAL LIEN

The Carrier shall have a general lien over the Container and the Goods at any time during the Performance of the Contract against the Customer for any monies due from the latter either from any earlier Contract or the present Contract or any Added Term to the same or any breach of this Contract by the Customer or the Customer's agents or persons under authorization of the same. If the lien is not satisfied by the Customer within a reasonable time specified by the Carrier, the latter shall have the absolute discretion to sell the Goods as agents for the Customer and the proceeds from the sale together with the deduction from the amount of the costs of holding the sale shall for the purpose of this Contract be deemed part of monies due to the Carrier if that amount is less than the total monies due; if the proceeds less the deduction on the costs of sale exceeds the amount owed to the Carrier, the balance of the same shall in due course be paid to the Customer once the Carrier is fully satisfied that there are no more monies due to the Carrier from the Customer or their agents.

ARTICLE XXXXIV

TERMINATION OF CONTRACT

i. The Carrier may in its full discretion and in a written form to the Customer refuse to perform the Contract at any stage of the same (herein referred to as 'Termination of Contract') if it is found that any details of the Goods in the Containers do not correspond to the RFD or the Consignment Note, any material inconsistency as shown in the Computer Data Interchange Program, any events of Force Majeure, any other incidence or material information from third parties that would be reasonable for any haulage operator in the industry to infer or

foresee that in all probable likelihood to continue with the Performance of the Contract would injure the Carrier in its reputation, itself or others, produce undesirable incidents that might harm the safety or lives of persons or give rise to legal or economic hardships to the Carrier.

ii. The right propounded under this Article apply to Containers and Goods in Transit and upon receiving the notification of Termination of Contract, the Customer are given a period of one (01) month to clear the Containers or Goods themselves or through any third party from any transit point at no costs to the Carrier. If the above operation involve any loss or damage to the Carrier's property or third parties or cause injury or loss of lives in any legal definition to any parties, it is therefore a liability borne by the Customer and the same has to bear whatever consequence legal or otherwise and make good the loss and damage present.

iii. The Carrier reserves its full right to charge the Customer for whatever costs it has incurred plus service charges if Performance has been effected at any point during the Contract duration prior termination of the same and this charges shall include the economic costs incurred operationally in the case of Goods situated at the Port, Airport, Railway, bonded or non-bonded warehouses, costs incurred due to deviation and other acts to mitigate the situation, damage or loss resulting from the breach of this Contract; and where Goods are stored at the Port or Bonded warehouses, the charges shall run from the duration of the free storage period up to the moment clearance has been effected by the Customer or third parties plus all other costs should there be loss and or damage resulting from the operation done by the Customer and or third parties therefrom.

CONDITIONS OF TARIFFS FOR CONTAINER HAULAGE KONTENA NASIONAL BERHAD (11065-T)

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KONTENA NASIONAL BERHAD CONDITIONS OF TARIFFS FOR CONTAINER HAULAGE

The Carrier accepts the carriage of Goods in Containers and any logistical movements subject to this Conditions of Tariffs for Container Haulage.

ARTICLE I

COMPUTATION OF TARIFFS

i. The computation of tariffs for the transportation of an ISO 20' Container is based on the actual distances covered calculated to the nearest kilometre. Any surcharge shall be added to the tariff. The computation is as follows :

A. Short Haul up to 60 miles (96 km) from Port

1st 20 miles (32 km) 29 cents per ton mile (laden) or 18 cents per ton km (laden)

2nd 20 miles (32 km) 20 cents per ton mile (laden) or 12.5 cents per ton km (laden)

3rd 20 miles (32 km) 11 cents per ton mile (laden) or 7 cents per ton km (laden)

B. Medium and Long Haul of 60 miles (96 km) or more from Port

1st 30 miles (48 km) 25 cents per ton mile (laden) or 16 cents per ton km (laden)

2nd 30 miles (48 km) 15 cents per ton mile (laden) or 9.5 cents per ton km (laden)

3rd 30 miles (48 km) 10 cents per ton mile (laden) or 6.25 cents per ton km (laden)

Thereafter 8 cents per ton mile (laden) or 5 cents per ton km (laden)

ii. The above calculation is used for all movements of Container haulage and where there is no Goods hauled (Prime mover and trailer empty) computation shall be based at half the tariff calculated to the nearest Ringgit. However the tariff shall not be lower than the minimum charge of RM116.00 (laden) or RM58.00 (empty) for 20' Container.

iii. Where there are haulage of Goods for both ways ('both ways laden') computation shall be double the tariff calculated.

iv. For the purpose of calculation a 20' Container is deemed to weigh 20 tonnes.

v. Where there is movement of a Prime Mover without Trailer, no tariff shall be charged.

vi. The tariffs for haulage of 40' and 45' Containers will be computed on basis of double the standard rate of the 20' Containers.

ARTICLE II

PUBLISHED TARIFFS

i. The tariffs imposed based on the calculation in **Article I** above is also published by the Carrier in form of a booklet or handout for easy reference. This booklet or handout contains tariffs for both 20' and 40' Containers for round trips (one way laden and one way empty).

ii. Where there is two way laden trips the calculation as per **Article I.i** and **I.iii** shall be used for they are not published in the booklet or handout.

ARTICLE III

PAYMENT OF TARIFFS AND SURCHARGES

The payment of Tariffs and surcharges and any other related costs such as Tolls shall be paid in advance by the Customer before the commencement of the Service unless the Customer has been granted a Credit Facility arrangement with the Carrier.

ARTICLE IV

SURCHARGES

The Carrier shall impose surcharges as part of the payment for the Service rendered whenever they arise. These surcharges are as follows :

A.Direct Loading or Delivery

In normal circumstances no Containers shall be loaded onto the ship by the Carrier or taken from the ship and delivered directly to the Customer premise or destination for the Carrier 's activity is limited to the yard of the Port Authority/ Terminal Operator where Containers are delivered to or taken from the same. However the Customer may request for direct loading or delivery by making an application to the Carrier at least twenty four (24) hours before the expected loading or delivery is to take place. The surcharge for such activity is RM100.00 for both 20' and 40' Containers.

B.Surcharge for Overweight, Overheight and Overwidth Containers

The term 'Overweight' is used to denote the circumstance where Containerised Goods exceed the permitted weight requirement of any Governmental regulations for Containerised Cargo. The terms 'Overheight' and 'Overwidth' denote the situation where the height or width of the Cargo exceeds the height and width of the Container. In such a situation a surcharge of 50% of the tariff rate is imposed for both 20', 40' and 45' Containers.

C.Haulage of Refrigerated Cargo and Dangerous Goods

For haulage of Refrigerated Cargo/Containers and Dangerous Goods a surcharge of 50% of tariff rates is imposed on all types of Containers.

D.Freezer unit and Tipping device

The Carrier imposes a 100% surcharge of tariff rate for the use of freezer unit (trailer fitted with generator set) and tipping device.

E.Low Bed Trailer

A surcharge of 50% of tariff rate is imposed on the use of Low Bed Trailer.

F.Side Loader

For the use of a Side Loader a surcharge of RM90.00 is imposed on 20' Container and RM140.00 for a 40' or 45' Container.

G.Excepted Goods (Please refer to Article I 'Definition' of the Conditions of Carriage)

There is a surcharge of RM100.00 and RM200.00 respectively for a 20' and 40' Containers carrying Excepted Goods. However on Public Holidays an additional surcharge of 100% of the original tariff is further imposed.

H.Perishable Cargo (Non Refrigerated)

A surcharge of RM50.00 and RM100.00 respectively for 20' and 40' Containers shall be levied.

I.Detention Charges of Prime Movers and Trailers

Detention charges will be raised for Prime Movers and Trailers on the following basis :

I. Prime Mover

- a.First quarter hour : no charge
- b.Thereafter for every hour or part thereof : RM40.00

II.Trailer

- a.First 4 hours : no charge
- b.Thereafter for every hour or part thereof : RM10.00 for 20' Container and RM20.00 for both 40' and 45' Containers.

J.Waiting Time of Trailers

- I. Charges for waiting time of Container movements at the Port or Terminal Operators depot will be on following basis :

- a.First 15 minutes : no charge.
- b.Thereafter for every hour or part thereof : RM10.00

- II. The above charges will be computed on either the period (Sunday excepted) between the arrival of the Container at the Port or Terminal depot and the time the Container is off-loaded or the period between the arrival of the

Trailer and the mounting of the Container.

K.Diversion of Containers

- I. 'Diversion' means to move a Container from the premises of the Customer to the premises of another Customer/trader at the request of either one of the Customers, traders, shipping lines or their agents or any change in destination at the request of the Customer, trader or their agents from the first appointed destination as stated in the RFD.
- II. Only written notification for diversion, officially endorsed by the Customer will be accepted and a charge of RM50.00 and RM100.00 for 20' and 40' Containers respectively shall be charged. In addition the Customer will also be charged the difference in rates between the two destinations.

L.Toll Charges

The toll charges incurred by the Carrier shall be charged at costs to the Customer.

ARTICLE V

FUTILE TRIPS

Where by prior arrangements, the Carrier presents the Trailer and Prime Mover with the Container and through no fault of the Carrier the Customer is unable to receive the said Container then the full rate (round trip charge) of the futile trip shall be charged.

ARTICLE VI

PUBLIC HOLIDAYS

- i. The Carrier will be closed for business on the following public holidays :
 - a. Hari Raya Puasa : 2 days
 - b. Chinese New Year : 1 day
 - c. Hari Kebangsaan (National Day) : 1 day
 - d. Deepavali : 1 Day

e.Christmas Day : 1 Day

ii.Consideration will be given for the movements of Containers with Excepted Goods on the above holidays depending on the degree of urgency with the requests made at least twenty four (24) hours before the Carrier closes its office for business on the holidays. The charges imposed on such movement is double the normal Tariff.

iii.For the Container movements during the gazetted public holidays (as applicable to the branch concerned) other than those stated above, a holiday charge of RM280.00 per Container is applicable. Any request for such movements should be made not later than twenty four (24) hours before the Carrier closes its office for business during the holidays.

ARTICLE VII

IMPLEMENTATION AND MODIFICATION OF THE CONDITIONS OF TARIFFS FOR CONTAINER HAULAGE

The Carrier reserves the right to implement and or modify the Conditions, tariffs or parts thereof at any time.

CONDITIONS OF STORAGE AND DEPOT

THE UNIVERSITY OF CHICAGO

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CONDITIONS OF STORAGE AND DEPOT KONTENA NASIONAL BERHAD (11065-T)

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THESE CONDITIONS OF STORAGE AND DEPOT CONSTITUTE A BINDING CONTRACT WITH ALL CUSTOMERS ON WHOSE BEHALF THE CARRIER PROVIDES A SERVICE.

NOW THE PARTIES TO THESE CONDITIONS OF STORAGE AND DEPOT WITNESSETH AS FOLLOWS :

ARTICLE I

DEFINITION

'Added Term' means the new request or counter-offer by the Customer to do certain tasks or jobs post the commencement of the Contract which has been accepted by the Carrier either orally, written or by conduct as enumerated in **Article VII** of this Contract herein.

'Carrier' means Kontena Nasional Berhad, appointed subsidiaries, successors in title and permitted assigns.

'Company' means by firm, company, association, consortium, Government Authority, incorporation or any society therein.

'Computer Data Interchange Program' means the computerised data-interchange program with the Port Authority or any Terminal Operator or any other form of software programme of like nature whereby information on the details and movements of cargo are transmitted via the computer system of the Port or Terminal Operator or any other party to the Carrier for the purpose of facilitating cargo movements and other logistical matters.

'Conditions of Storage and Depot' means Contract.

'Consignment Note' means the Delivery Order consisting of several documents to be signed by the Customer or the Carrier during the Performance of the Contract.

'Containers' mean any container, flexitank, transportable tank, flat or pallets which correspond to the standards of International Standard Organisation (ISO) or Industrial Institute of Malaysia (SIRIM) thereof.

'Customer' or **'Customers'** means persons or body corporate, corporation, statutory bodies and other third parties who have either legal, beneficial ownership or both or any kind of ownership in equity or at law, possessor control or lien over the Goods and whom entered into the Contract with the Carrier. **'Customer'** or **'Customers'** can also be any person who is an agent or principal of the Customer by definition of Common Law, any persons who have apparent and ostensible authority to act on behalf of the Customer, principal or agent of the same and any other third parties. **'Third parties'** may also be the party who deals with Unauthorised Transaction within the meaning of this Contract. For the purpose of this Contract **'Customer'** may include owner of Goods or Containers; consignor, consignee, shipper or agents of the same.

'Dangerous Goods' means any goods that are of a dangerous, inflammable, radioactive or damaging in nature either to itself or other property or persons including firearms, ammunitions and explosives, goods so dangerously packed that may encourage the habitation of other animals, micro-organisms or fungi or likely to involve detention to itself or persons or any property, effect hindrance in any manner whatsoever to the Performance of the Contract or any other third party contract in which the Carrier is a party, **'Dangerous goods'** classified by the International Maritime Organisation (IMO) or any other laws, bye-laws or regulations enforced in Malaysia or internationally.

'Excepted Goods' means livestock, furs, watches, precious metals and stones, Treasury Notes, gold bullion or ingots, cash in any currency, bonds, deeds, stamps, securities, manuscripts, paintings, documents, safety razor blades, cigarettes lighters, bottled perfumery, tobacco, cigars, cigarettes, bottled wines, liquors, liqueurs, spirits and the like.

'Force Majeure' means an event not within the control of the Carrier and has a direct effect on its obligations in the Performance of this Contract; events which it is unable to prevent, avoid or remove and shall include war whether declared or not, hostilities, invasion, armed conflict, act of foreign enemy, riot, insurrection, strikes, resolution, act of terrorism, sabotage or criminal damage, natural disasters including earthquakes, lightning, volcanic eruptions, hurricanes, tempest, fires and floods.

'Fragile Goods' means any goods of fragile or brittle nature having an inherent likelihood or propensity to break or change its appearance or chemical constituent, be reduced in its value or consumers confidence from any point of view, perception or aesthetics, glass, fine bone china, metals, paintings, pictures, goods with inherent defect or vice, goods that are not favourable to packing or packaging, human or machine handling or interference or transportation purposes.

'Goods' means any goods or consignment within the definition of this Contract and within the Contract period and whenever appropriate it is also used to mean non-containerised Goods as opposed to Containerised Goods.

'goods' means any goods or consignment in the literal and general sense.

'Government' means the Government of Malaysia and shall include the Secretary General, Ministry of Finance, its statutory bodies, Governmental institutions and its duly appointed representative.

'Kontena Nasional Berhad Tariffs for Warehouse and Depot' means a published list of charges by the Carrier from time to time relating to the storage of Goods thereto.

'Obnoxious Goods' means any substance which causes discomfort or adversely affect human interference or handling, taint other Goods, Containers or packaging or damage them chemically or physically; any deliquescent cargo which draws in moisture from the air or its surrounding, any cargo that is moist or in a wet condition; cargo that is liable to infestation by insects, mites, weevils, grubs or the like requiring fumigation; any cargo of liquid or semi liquid nature that has the propensity to liquidate with a change in temperature and any other cargo deemed obnoxious at law.

'Party' or **'Parties'** means any party to these Conditions of Storage being the Carrier and the Customer or both or any other third party not bound by this Contract depending on the construction of the sentence.

'Performance of the Contract' or **'performance'** means the duties and obligation of the parties to this Contract.

'Service' means the storage of Containers, Containerised Goods or Goods and any other considerations to this Contract.

'Unauthorised Transaction' means the Unauthorised Transaction as defined in **Article XX** of this Contract or any transaction either partially or in full which is similar or mirrors the kind of transaction that is authorised by the Carrier in this Contract or performance of the same; the former transaction which is done or carried out by anyone including the Carrier's own employees without reasonable or material knowledge of the same or any other parties or persons whom fraudulently act or purport to act on behalf of and without any authorization of the Carrier.

ARTICLE II

CONDITIONS OF STORAGE AND DEPOT

i. These Conditions of Storage and Depot came into force on June 1, 2000 and shall supersede all previous Conditions of Storage and Depot.

ii. This Contract is binding on the Carrier and the Customer the moment there is acceptance by the Carrier to perform its obligation to store the Containers, Containerised Goods or Goods in the warehouse, yard or depot thereto; the above tasks in whatever permutation in accordance with the request of the Customer in the form of 'Shipping Manifest', facsimile transmission, oral or by conduct; the obligation of both parties to terminate upon the fulfilment of all contractual rights and obligations therein.

ARTICLE III

TARIFFS AND CHARGES

i. 'Kontena Nasional Berhad Tariffs for Warehouse and Depot' is herein incorporated in the Contract. Copies of the same are obtainable from the Carrier upon request.

ii. It is expressly declared that the published Tariffs referred to in paragraph one (01) of this Article is not exclusive and the Carrier reserves unlimited right to use a different charge or rate for the Services rendered based on the Service agreed between the parties, nature of cargo and duration of storage and other considerations customarily adopted or used by the Carrier.

ARTICLE IV

PAYMENT OF TARIFFS AND CHARGES

i. The payment of the Tariffs and charges which is the consideration for the Service rendered by the Carrier to the Customer shall be paid immediately by the Customer before Goods or Containers are to be taken out of the warehouse or depot respectively and this requirement also apply to Goods or Containerised Goods that have been cleared from the Customs with the relevant Customs duties paid before clearance from the warehouse or depot or the issuance of a Gate Pass is done. However if the Customer has been granted a Credit Facility

arrangement with the Carrier, payment is to be made within the specified period stated in the Credit Facility.

ii. Both parties to this Contract agree that the terms and conditions of the Credit Facility are an integral part of this Contract and the Carrier reserve its rights to amend the said terms and conditions from time to time with prior written notice to the Customer.

ARTICLE V

INVOICES

By virtue of this Contract, the Customer is given fourteen (14) days grace period to dispute any invoices billed to the former by the Carrier in written form failing which all invoices are deemed as final and conclusive evidence of the acceptance of the Customer of its indebtedness to the Carrier in the amount stated.

ARTICLE VI

DURATION OF CONDITIONS OF STORAGE AND DEPOT

i. The Carrier may at any time alter, amend or revoke any or all provisions, articles or statements of these Conditions of Storage and Depot subject to the provision of written notice to the Customer.

ARTICLE VII

ADDED TERM OF CONTRACT

i. In the event that the Customer give instructions to the Carrier to carry out certain tasks or jobs that are contrary to the Contract; the Carrier on receiving this instruction acquiesces in the same by carrying out those task or job as if it is an Added Term to the Contract without prejudice to its rights as a service provider and that of the Customer for the same added service. Where there is another term or articles in the original Contract that is inconsistent with the Added Term, the original term shall be amended or considered void by the Carrier if it produces hardship, economic loss and or damage to the former and other parties thereto.

ii. The Customer shall also bear the full responsibility to compensate the Carrier and other affected parties for any loss and or damage that accrues either directly or indirectly from the task or job done arising from the instructions given to the Carrier.

ARTICLE VIII

AMENDMENT AND REVOCATION

Both parties to this Contract may amend any terms of the Contract or revoke the same upon mutual agreement in writing.

ARTICLE IX

APPLICATION OF LAW

This Contract and all other agreements between the Carrier and the Customer shall be governed by the Laws of Malaysia and both parties irrevocably submit to the exclusive jurisdiction of the Courts of Malaysia.

ARTICLE X

SUB-CONTRACT

The Carrier reserve its rights to employ the service of any other carrier, storage operator and third parties in the Performance of the Contract without notice to the Customer. For the purpose of this Contract, all rights and obligation of the other carrier, storage operator and third parties are deemed as the 'immediate parties' to the Contract with the Customer. However under no circumstances shall the situation be construed that the Carrier is liable for the acts, omissions and obligations of these 'immediate parties' and the Carrier is not jointly or severally liable for the immediate parties acts, omissions or obligations under the Contract whatsoever.

ARTICLE XI

RIGHTS OF THE CARRIER AND LIABILITY OF CUSTOMER

The **rights of the Carrier** over the Customer in the form of a legal action or otherwise and the **liabilities of the Customer** as per this Contract or by

operation of the Common Law and the Law of Equity shall remain notwithstanding the **Limitation Act 1953** thereof.

ARTICLE XII

FORCE MAJEURE

i. The Carrier is not liable for the Performance of the Contract if it is unable to perform its obligation or effect Termination of the Contract due to an event of Force Majeure. In the event of the same, the Customer shall endeavour to help the Carrier in whatever ways to mitigate any effect that the same might have on the Performance of the Contract of both parties.

ii. In the event of Force Majeure, any total or partial loss or damage to the Goods or Containers is the liability of the Customer and the Carrier shall not be responsible for any claims either from the Customer or any other third party for the loss or damage therein.

ARTICLE XIII

IMPOSSIBILITY OF PERFORMANCE

The Carrier shall be relieved from its obligation to perform the Contract to the extent that the Performance of the same is prevented by failure of the Customer, events of Force Majeure, weather conditions or cause beyond the reasonable control of the Carrier.

ARTICLE XIV

LIABILITY FOR LOSS OR DAMAGE

Without prejudice to the generality of all other Articles in this Contract, the Carrier is not liable for any loss or damage to the Goods or Containers if it is found that the Customer has breached any articles of the same or any oral or written promise or undertaking, any cause or events which the Carrier could not avoid or be prevented by the exercise of reasonable diligence, seizure or forfeiture under legal process; error, act, omission, misstatement or misrepresentation by the Customer or other owner of Goods or Containers or by servants or agents of either of them; the wrongful act or neglect of the Customer; inherent liability to wastage in bulk or weight, latent or inherent defect, vice or natural deterioration

of Goods or Containers; loss or damage of Goods due to the same present in other Goods; loss or damage of Goods due to vermin, white ants, insects, bacterium or fungi; any handling, loading, unloading or storage by the Customer or its agents; any cause or event which the Carrier could not avoid and the consequence which could not be prevented by the exercise of reasonable diligence; insufficient or improper packing; insufficient or improper labelling or addressing; Customer or any consignee not taking or accepting delivery within a reasonable time after Goods or Containers have been tendered and finally the loss or damage resulting from the 'Added Term' of the Contract as specified in **Article VII** therein.

ARTICLE XV

LIMIT OF LIABILITY

i. The Carrier's limit of liability under this Contract and any other laws, regulations, statutory enactments and bye-laws either locally or internationally pertaining to any matter relevant to the goods, obligations and duties of the Carrier shall not exceed Malaysian Ringgit RM3.00 (Malaysian Three Ringgit) per kilogram of gross weight of Goods lost or damaged during the Performance of the Contract. If however the gross weight of Goods declared to the Carrier is lower than the actual gross weight of the same, compensation shall only correspond to the gross weight of Goods lost or damaged declared and not the actual gross weight of the same.

ii. In the reverse event where the gross weight of Goods declared is higher than the actual gross weight of the same, compensation shall only correspond to the actual gross weight of the Goods lost or damaged therein.

iii. The Carrier reserves its full discretion in making compensation only to deserving cases and the Malaysian Ringgit RM3.00 compensation per gross weight in kilogram of Goods lost or damaged is not the fixed value to be computed, rather it only serves as a ceiling on the maximum amount of Ringgit per kilogram to be applied where the Customer is able to prove liability.

iv. Customers whom do not declare the gross weight of Goods to the Carrier run the risk of non-compensation by the Carrier notwithstanding that the claim on the Goods lost or damaged is material for settlement purposes.

v. By virtue of this Contract it is hereby declared that in any one claim deserving of compensation shall not exceed the Malaysian Ringgit RM100,000.00

(Malaysian One Hundred Thousand Ringgit) and it is incumbent on the Customer to have an insurance placement over Goods and Containers on their own account.

vi. It is expressly agreed that in any one claim deserving of compensation shall not exceed the actual value of the Goods lost or damaged, failing which the computation of Malaysian Ringgit RM3.00 shall not apply but only the actual value of the Goods lost or damaged taking into account the current market value of the Goods, depreciation and other relevant considerations thereto.

vii. The Customer shall be entitled at any time before the commencement of Transit to give seven (07) days written notice to the Carrier requiring that the aforesaid RM3.00 (Malaysian Three Ringgit) per kilogram of gross weight be increased but not so as to exceed the value of the Goods and in the event of such notice being given the Carrier shall within the said seven (07) days exercise its discretion to agree or not to agree with the Customer or to reach a common mutual agreement with the latter in consideration of the increased limit.

ARTICLE XVI

LOSS OR DAMAGE TO CONTAINERS

The Carrier shall compensate the Customer for the loss or damage of Containers if such loss or damage occurred through the negligence of the Carrier at law and compensation shall not exceed the Malaysian Ringgit RM100,000.00 (Malaysian One Hundred Thousand Ringgit) for any one claim or incident.

ARTICLE XVII

COMPENSATION CLAIMS

i. In the event of any incident of loss or damage of Goods or Containers or any incidents leading to a reasonable inference of the same, the Customer shall **immediately inform** the Carrier of such incidents within twenty four (24) hours from the time of the occurrence of the same, failing which the Carrier reserves the right to reject any claim under this Contract.

ii. All formal claims by the Customer must be made within fourteen (14) days from the date of any incidents giving rise to the same or the date the Performance of the Contract was completed or Termination of the Contract was effected or the

date where both parties to the Contract have stopped carrying out their obligation to the same therein.

ii. The rights to claim for a compensation is revoked if it is made after the fourteen (14) day time limit has expired.

ARTICLE XVIII

INDEMNITY

Without prejudice to the other Articles of this Contract, the Customer shall indemnify the Carrier against all consequences suffered by the Carrier (including but not limited to claims demands, proceedings, fines, penalties, damages, costs, expenses and loss of or damage to the warehouse, depot, the carrying vehicle, Containers and to Goods belonging to third parties) of any error, omission, misstatement or misrepresentation by the Customer or other owner of the Goods or Containers by any servant or agent of either of them; insufficient or improper packing, labelling or addressing of the Goods or fraud as in **Article XXI** therein; all claims and demands whatever by whoever made in excess of the liability of the Carrier under these Articles; all losses suffered by and claims made against the Carrier in consequence of loss of or damage to property caused by or arising out of the Carrier under this Contract; and claims made upon the Carrier by The Royal Customs and Excise Department in respect of dutiable Goods consigned in bond whether or not Transit has ended or been suspended.

ARTICLE XIX

INSURANCE

i. The Customer warrants to ensure that their Goods or Containers are insured under an insurance policy or policies against any event of loss and or damage from the commencement of the contractual obligations of both parties and for the full market value. The Carrier reserves its right not to have any insurance over the same. A copy of the Customer's policy shall be available to the Carrier on demand and there shall be no entitlement of subrogation to the insurer of the Carrier or the Carrier in that policy.

ii. For the purpose of this Contract, 'commencement of contractual obligations' is effected at the time there is a valid acceptance at law to the offer made by the Customer to the Carrier to perform the Service.

ARTICLE XX

ADHERENCE TO CONTRACT TERMS AND OTHER TERMS CUSTOMARY IN THE LOGISTICS OPERATION / UNAUTHORISED TRANSACTION

i. It is the responsibility of the Customer to ensure that proper procedures practised by the Carrier are adhered to in particular the information on the nature and type of Goods or Containers, date and time of delivery to the Carrier or destination and number of Goods and other inherent characteristics before the commencement of the Service. Any transaction that do not confirm to this and other requirements which is customary in the logistics operations of the carrier or in the general logistics industry is an **Unauthorised Transaction** and the Carrier is not responsible for any loss and or damage either to the Goods or Containers, property of the Customer or any party, personal injury or death of persons arising from this Unauthorised Transaction.

ii. In the event that there is any loss, damage, injury or death to any employees or agents of the Carrier or third parties; the Customer warrants and undertakes to pay and compensate the same thereof.

ARTICLE XXI

LIABILITY ARISING FROM FRAUD AND UNAUTHORISED TRANSACTION

The Carrier shall not in any circumstance be liable in respect of Goods or Containers where there has been **fraud** or **Unauthorised Transaction** on the part of or committed by the Customer or owner of the Goods or Containers or the servants or agents of either in respect of the same unless the fraud or the Unauthorised Transaction has been contributed by or accomplished with the complicity the Carrier or any servant of the Carrier acting in the course of his employment.

ARTICLE XXII

INFORMATION ON GOODS TO THE CARRIER

The Customer shall furnish to the Carrier with a complete set of information on the nature of Containers, Goods or Containerised Goods; the method or type of packaging or packing and any other information that is crucial to maintain the Goods and precautions to be taken to avoid or minimise any possible loss or liability to the lives of persons, Goods and any other property of any party; this

information must be given to the Carrier before the commencement of the Contract failing which the Carrier may exercise its right of termination of Contract or waive the right of the Customer to invoke **Article XV** of this Contract for compensation or any other Articles of the same.

ARTICLE XXIII

PACKAGING AND PACKING OF GOODS

i. The Customer warrants that the packaging of Goods used in packaging the same are of good and sound quality best suited to the nature of the Goods in question and fit for the purpose it is required for namely to package the same and prevent any possible loss or damage of Goods being packaged and both the packaging and the packing of the same will prevent the loss or liability incidence to the Carrier or and third party lives or property therein.

ii. It is the liability of the Customer to compensate the Carrier in full should there be any loss or damage which is caused directly or indirectly from the packing and packaging of the Goods or Goods to the property of the Carrier or other third party property including transportation gears and vehicles, personnel and third parties and the Carrier shall not be liable to any third party claims or suits in the matter.

iii. Where there is an agreement for the Carrier to effect the packing or supply packaging of the Goods, unless otherwise instructed by the Customer, the Carrier shall only provide the crates, cases, lift vans, pallet or any other design of like nature with the customary build and quality requirements used by the Carrier. The Carrier shall not be liable for any defects or question on fitness for purpose that is over and above what is normally and customarily provided for by the Carrier and any loss or damage which is attributed to the packaging material or the way packing is done if there is no express declaration by the Customer on the nature of the Goods or any other information which is important for the Carrier to observe relating to packing and transportation purposes.

iv. Failure by the Customer to observe the requirements of this Article shall render the Customer liable to any loss or damage which is caused directly or indirectly from the packing or packaging of Goods or Goods to the property of the Carrier or other third party Goods including Containers, transportation gears and vehicle, personnel and third parties, Goods belonging to third parties that have been consigned together on the same vehicle or in Containers and all other third party claims and suits therein.

ARTICLE XXIV

WARRANTY AND UNDERTAKING

- i. The Customer warrant that the description of the Goods and or Containers to the Carrier, its value, quantity, weight, measurement and all other particulars are true and correspond to the kind of information written on the packing list, invoice of Goods, Certificate of Origin, Bill of Lading, Shipping Manifest, Air Way Bill and other documents tendered to the Port, Airport and Railway Authority or any Terminal Operators for marine, air, rail and land transportation in which the Carrier relies by means of these documents or via the Computer Data Interchange Program for information purposes.
- ii. In the event that the above is not adhered to the Carrier reserves its full right to either terminate the Contract, temporarily suspend the Performance of the Contract, appoint third parties to effect any part of the Contract, execute lien over the Goods or Containers or in extreme cases to sell the same or any part thereof in addition to payment and compensation in full by the Customer for whatever loss, damage or hardship caused to the Carrier, its servants, agents and third parties.
- iii. It is a duty of the Customer to be continuously vigilant on the nature of information that they have given to the Carrier prior to the commencement of the Contract or during the Performance of the Contract, the Shipping Manifest and other logistical documents from third parties pertaining to the Goods or Containers and upon receiving information that the same is wrong, erroneous or fraudulent; the Customer shall make notification to the Carrier **as soon as possible**, failing which the Carrier may invoke any or a combination of the rights enumerated in paragraph two (ii) of this Article without waiver of an entitlement to a full indemnity.

ARTICLE XXV

OFFER OF THE CUSTOMER FOR THE CARRIER TO PERFORM THE SERVICE

- i. The Carrier reserves its rights and full discretion not to accept any offer of the Customer to perform the Service in particular Goods or Containerised Goods belonging to the category of 'Dangerous Goods', 'Special Goods', 'Fragile Goods' and 'Obnoxious Goods'. Notwithstanding the same, the Carrier may also refuse any offer of the Customer not related to these categories without any reasons whatsoever given to the Customer.

ii. The Carrier may perform the Service relating to 'Dangerous Goods', 'Special Goods', 'Fragile Goods' and 'Obnoxious Goods' upon a full and material disclosure of the nature of goods by the Customer in a form of a written declaration and on a special arrangement made either between the Carrier and the Customer or with third parties.

iii. For purpose of this Article, Goods or Containerised Goods which are or containing 'Dangerous Goods', 'Special Goods', 'Fragile Goods' and 'Obnoxious Goods'; the Customer undertake to compensate the Carrier or any other third parties for any loss and or damage resulting either directly or indirectly from the Performance of the Contract of the same notwithstanding that the direct causal effects are due to the Carrier or third parties the latter whom are either authorised or unauthorised, under employment or not under employment with the Carrier or the Customer.

ARTICLE XXVI

SECURITY AND INSURANCE FOR EXCEPTED, FRAGILE, DANGEROUS AND OBNOXIOUS GOODS

i. The Carrier is not responsible for the security or insurance of the Goods referred to in **Article XXV** and the Customer hereby warrants that he will obtain comprehensive policies of insurance and arrange for security during the Performance of the Contract therein at no cost to the Carrier.

ii. Notwithstanding the above however, the Carrier may provide or employ the security services of a Security Firm at an agreed rate with the Customer.

ARTICLE XXVII

DISCREPANCY ON THE NUMBER OF ITEMS OR GOODS IN CARTONS, BOXES, CASES, LIFTVANS, CONTAINERS

The Carrier is not responsible for any discrepancy in the weight, number of items, or packages or Goods purported to be in cartons, boxes, cases, liftvans, Containers, 'palletized Goods' or any other type of packaging save for the information that is printed or written on the same or the information given by the Customer or its agents for the tallying of Goods or the issuance of the 'Unpacking Lists For Surveyors' or any other documents of like nature.

ARTICLE XXVIII

TRANSPORTATION OF DANGEROUS GOODS

It is a duty of the Customer to label any packages or Containers carrying 'Dangerous Goods' and the carrying vehicle by means of symbols and affixed with certification mark incorporating the appropriate United Nations logo, and the party that is to effect packing and packaging of the same shall do so in accordance with any statutory regulations for road or sea transport either locally or internationally.

ARTICLE XXIX

LOADING AND UNLOADING

i. Where upon agreement between the Customer and the Carrier the unloading of Containers, Containerised Goods or Goods to the Depot, yard or warehouse are to be done by the Customer or its agents or any loading of the same pursuant to this Contract; the loading or unloading activity is done at the Customer's own risk. Any assistance given by the Carrier or its personnel or third parties under the direction of the former shall be at the sole risk of the Customer and any loss or damage arising therefrom shall not be on the account of the Carrier therein.

ii. It is the responsibility of the Customer to make sure that proper adequate steps, machineries and precautions are utilised to effect loading or unloading for 'Excepted Goods', 'Special Goods', 'Dangerous Goods' and 'Obnoxious Goods' and any assistance given by the Carrier or its personnel at the request of the Customer are at the sole risk of the same with no liability on the Carrier on any loss or damage to Containers or Goods thereby arising. The Customer shall also indemnify the Carrier against any loss or damage legal or otherwise which the Carrier might suffer as a consequence of the above.

ARTICLE XXX

CONSIGNMENT NOTE

The Carrier shall, if so required sign a Consignment Note or a document prepared by the Customer acknowledging the receipt of the Goods or Containers but no such document shall be evidence on the condition of Goods or Containers or the nature of Goods, its quantity, weight and other particulars given to the Carrier.

ARTICLE XXXI

CONTAINERS

i. It is the duty of the Customer to make sure that any Container provided is fit for the purpose it is required for and the Carrier is not liable for the unsuitability or defective condition of the Container which could not reasonably be foreseen by any reasonable haulage operator in the logistics industry.

ii. In the event that the Customer finds any defect or unsuitability of the Container in question, it is a duty of the Customer to alert the Carrier within twenty four (24) hours of delivery of the Container by the Customer or the Shipping Line company or its agents to the Carrier or within twenty four (24) hours of the finding of such defects failing which the Carrier may treat the Contract as terminated.

iii. The Carrier is equally not liable for the unsuitability or defective condition of any Container which condition is apparent upon reasonable inspection by the Customer at any time during the loading of Goods therein.

iv. The Customer undertakes that he will bring no claim against the Carrier for any loss whatsoever arising out of the transportation of their Goods in a defective or unsuitable Container and that he will indemnify the Carrier against any subrogated claim brought by the insurers or any other party.

ARTICLE XXXII

STUFFING OF CONTAINERS

Where there is an agreement between the Customer and the Carrier that the former is to carry out the stuffing or the loading of Goods into Containers; it is therefore a responsibility of the Customer or its agents to make sure that the same is done within the maximum weight limits pursuant to the Malaysian Government Regulations in force and the Customer shall indemnify and compensate the Carrier should there be any fines, detention or loss of revenue suffered by the breach of this Article.

ARTICLE XXXIII

INSPECTION OF GOODS

The Carrier reserves the right at any time during the duration of the Contract to inspect the Goods in Containers or Goods therein without prior notification to the Customer.

ARTICLE XXXIV

ELECTRICITY SHUTDOWN, COMPUTER MALFUNCTION, EVENTS OF FORCE MAJEURE

Where there are unexpected events outside the control of the Carrier such as electricity or computer shutdown or events constituting 'Force Majeure'; the Carrier shall not be liable to any loss or liability contributed by these unexpected events.

ARTICLE XXXV

LOSS OR DAMAGE TO THE CUSTOMER OR THIRD PARTY PROPERTY, EQUIPMENTS AND MACHINERIES IN CUSTODY OF CARRIER

Where at any point of the Contract; the equipments or machineries are left in the custody of the Carrier or any third parties representing the same; any loss or damage to the equipments and machineries is a liability of the Customer and the same has to make good any claims made by any party arising from the matter in question.

ARTICLE XXXVI

WARRANTY AND UNDERTAKING BY CUSTOMER TO COMPLY WITH ALL REGULATIONS AND REQUIREMENTS

The Customer warrants and undertake to comply with all regulations and requirements of the Royal Customs and Excise Department, Port Authorities and any other Authority, Terminal Operators, organisations or companies and shall bear and pay all duties, taxes, imports, fines, imports, expenses or losses suffered by the Carrier, its agents or any other third party due to the insufficiency of marking, numbering and defining the Goods or Containers therein.

ARTICLE XXXVII

RIGHT OF SALE OR DISPOSAL OF UNCLAIMED OR PERISHABLE GOODS

i. Where Goods or Containerised Goods are not claimed by the Customer after one (01) month from the date of delivery to the Carrier's warehouse or depot and despite notification to the sender or consignee or any party that is by the virtue of this Contract to receive the physical custody of the same; notwithstanding for any reasons there is no response to such notification or the Carrier is not given any information on the name and address of the person or company that is to receive the same in custody; the Carrier may exercise its power of sale under this Article and use the proceeds therein to cover itself all charges incurred from the commencement of the Contract up to the date of receiving the monies from the buyer of the same and the Carrier is discharged from all liabilities to the Customer, its agents and third parties.

ii. The Carrier may also exercise its power of sale under this Article for Goods or Containerised Goods that have perished or changed its nature or chemical constituents so as to affect other Goods or properties or be of nuisance to the Carrier and not claimed by the Customer after notification by the Carrier; the same shall be sold or auctioned to any party and at any price.

iii. The Carrier by the provision of this Article may also exercise its right to dispose unclaimed or perishable Goods or Containerised Goods for economic, safety or emergency reasons.

ARTICLE XXXVIII

GENERAL LIEN

The Carrier shall have a general lien over the Container and the Goods at any time during the Performance of the Contract against the Customer for any monies due from the latter either from any earlier Contract or the present Contract or any Added Term to the same or any breach of this Contract by the Customer or the Customer's agents or persons under authorization of the same. If the lien is not satisfied by the Customer within a reasonable time specified by the Carrier, the latter shall have the absolute discretion to sell the Goods or Containers as agents for the Customer and the proceed from the sale together with the deduction from the amount of the costs of holding the sale shall for the purpose of this Contract be deemed part of monies due to the Carrier if that amount is less than the total monies due; if the proceed less the deduction on the costs of sale exceeds the

amount owed to the Carrier, the balance of the same shall in due course be paid to the Customer once the Carrier is fully satisfied that there are no more monies due to the Customer or their agents.

ARTICLE XXXIX

TERMINATION OF CONTRACT

i. The Carrier may in its full discretion and in a written form to the Customer refuse to perform the Contract at any stage of the same (herein referred to as 'Termination of Contract') if it is found that any details of the Goods or Containerised Goods do not correspond to the information given to the Carrier, any material inconsistency as shown in the Computer Data Interchange Program, any events of Force Majeure, any incidence or material information from third parties that would be reasonable for any storage or warehouse operator to infer or foresee that in all probable likelihood to continue with the Performance of the Contract would injure the Carrier in its reputation, itself or others, produce undesirable incidence that might harm the safety or lives of persons or give rise to legal or economic hardships to the Carrier.

ii. Where termination is effected wherein the Containers or Goods are with a third party; the Customer shall clear the same at no costs to the Carrier. If the above operation involve any loss or damage to the Carrier's property or third parties or cause injury or loss of lives in any legal definition to any parties, it is therefore a liability borne by the Customer and the same has to bear whatever consequence legal or otherwise and make good the loss and damage present.

iii. The Carrier reserves its full right to charge the Customer for whatever costs it has incurred plus service charges if Performance has been effected at any point during the Contract duration prior termination of the same and this charges shall include the economic costs incurred operationally in the case of Goods and Containers stored at the warehouse or depot and other damages or losses resulting from the breach of this Contract.