

## **Keen Transport, Inc.**

### **Workmanship Warranty**

Keen Transport, Inc. takes pride that all kit installations, assembly, rigging work and machine modifications (hereinafter referred to as "the Work") are completed in the most professional way possible. Accordingly, Keen Transport, Inc. hereby warrants the Work to be free of defects in workmanship for a period of 30 calendar days from the date of completion of the Work, or for 100 hours of operation, whichever comes first.

This Warranty is between Keen Transport, Inc. and the Customer indicated below. This Warranty specifically covers the correction of any defect in workmanship of the Work provided by Keen Transport, Inc., labor for the repair or replacement of parts affected by any defect in workmanship of Keen Transport, Inc., and the repair or replacement at Keen Transport, Inc.'s option of parts so affected, up to a maximum dollar value equal to the labor charge paid by the customer to Keen Transport, Inc. for the original Work. All parts displaced by replacement under this warranty become the property of Keen Transport, Inc.

This Warranty does not cover any defect in kit parts or manufacturing nor any defect resulting from neglect, abuse, misuse, accident, environmental conditions, incorrect application, lack of maintenance or acts of God. This Warranty does not cover payment for any third party correction carried out without the prior written approval of Keen Transport, Inc., the correction of any item improperly repaired by anyone other than Keen Transport, Inc., the correction of any components, parts or accessories not assembled by Keen Transport, Inc. nor any item which has been modified or altered after completion of the Work. This Warranty does not include costs of travel; such costs of travel include, but are not limited to, mileage, travel time, tickets, lodging or meals.

Keen Transport, Inc. is not liable for any incidental, consequential, statutory or exemplary damages including, without limitation: Lost profit, loss of

business opportunity, loss of use of equipment, rental or purchase of replacement equipment or any other economic loss, whether actual or perceived.

This Warranty goes into effect as of the day of completion of the Work, provided Customer delivers to Keen Transport, Inc. a fully executed copy hereof. Said fully executed copy must be received by Keen Transport, Inc. no later than 10 days after completion of the Work. No claims of any nature whatsoever shall be honored under this Warranty if a fully executed copy is not delivered to Keen Transport, Inc.

The non-conflicting terms and conditions contained in Exhibit A, attached hereto and incorporated herein, apply.

For this Warranty to remain in full force and effect, Customer agrees to:

1. Conduct a pre-delivery inspection upon completion of the Work.
2. Ensure the proper maintenance and operation of covered equipment.
3. Require all operators to report any suspected defect and to immediately stop use of the covered equipment.
4. Notify Keen Transport, Inc. of a suspected defect in workmanship, as soon as possible but always within 24 hours.  
Notification may be made by calling 1 888 872 5336 ext 1252.
5. Not attempt any repairs until Keen Transport, Inc. has been given the opportunity to investigate the suspected defect.
6. Make the equipment available for inspection and/or repair by Keen Transport, Inc., or a third party agent authorized by Keen Transport, Inc.
7. Reimburse Keen Transport, Inc. for costs of travel to effect inspection and/or repair.

Keen Transport, Inc. will:

8. Arrange to inspect the reported failure as soon as possible but always within 72 hours of notification of a suspected failure.
9. Cooperate with and accommodate Customer's schedule as reasonably possible.

10. Determine the cause of failure or malfunction.
11. Correct any warrantable defect in Keen Transport, Inc.'s workmanship, at no additional labor charge to Customer.
12. Arrange with a third party servicing agent for correction if Keen Transport, Inc. is unable to affect a repair. Approval for third party repairs by Keen Transport, Inc. will be in writing and specify a maximum value. Any cost of labor or parts which exceeds the approved value will not be covered under this Warranty.

Machine Make \_\_\_\_\_ Model \_\_\_\_\_ Serial Number \_\_\_\_\_

Work Completion Date \_\_\_\_\_ Work Completion SMU \_\_\_\_\_

Customer \_\_\_\_\_ Location \_\_\_\_\_

Authorized Signature \_\_\_\_\_ Name \_\_\_\_\_ Title \_\_\_\_\_

Date \_\_\_/\_\_\_/\_\_\_\_\_

23.141.2

## EXHIBIT A- STANDARD LAND-BASED TERMS AND CONDITIONS

### 1. Definitions and Interpretation

1.1 In these Standard Terms and Conditions (the "**Conditions**"):

- (a) "**Charges**" includes all freight, costs, fees, expenses, commissions, duties, penalties, taxes, surcharges and/or other charges payable to the Company in respect of the Services and in accordance with the applicable tariff (if any) and/or these Conditions.
- (b) "**Company**" means any company who is a member of the Wallenius Wilhelmsen ASA Group of Companies ("**Group**") who provides the Services to the Customer upon and subject to the provisions of these Conditions.
- (c) "**Confidential Information**" means any and all confidential and/or proprietary information and material, whether in written, oral, electronic or other form, that is furnished or disclosed by a Party ("Discloser") or any of its respective managers, members, officers, directors, shareholders, partners, associates, employers, affiliates, subsidiaries, parent companies, representatives, employees, successors and assigns ("Representatives") to the other Party ("Recipient") or obtained by Recipient in connection with the Services. "Confidential Information" includes without limitation any business and financial information, customer information, marketing and strategic plans, proposed or existing contract terms relating to the Services, forecasts, strategic analysis, product information, manufacturing processes, prices, fees, financing arrangements, schedules and information concerning the identity of and contact information for any third-party, customers, producers, sellers, brokers, dealers, distributors, refiners, shippers, financial institutions, technology owners or manufacturers (collectively, "Contact Persons"), as well as any other business opportunities disclosed by Discloser to Recipient.
- (d) "**Customer**" means any person, for whom the Company agrees to provide or arrange Services and includes the shipper, holder, consignee, receiver of the Goods, any person owning or entitled to the possession of the Goods and anyone acting on behalf of or as principal of such person.
- (e) "**Facility**" means any facility or premises, including hard standings, storage area and any buildings, owned, leased, operated, or used in connection with the Services by the Company or any of its subcontractors.
- (f) "**Goods**" means the whole or any part of the cargo in respect of which the Company provides Services, including any attachments or spare parts, containers and any packaging or other equipment or supplies supplied by or on behalf of the Customer.
- (g) "**Information**" means data, messages, advice, and/or any information (including electronic data) in any form.
- (h) "**Information System**" means any computer hardware, computer software, website, portal, communication lines and Information processing technologies operated and/or used by the Company, the Customer or any third party in connection with the Services (including, any system which sends or receives Information or is otherwise used for Information interchange).
- (i) "**Instructions**" means a written statement of the specific requirements from the Customer or any party acting for and/or on his behalf.
- (j) "**Party**" or "**Parties**". Company and Customer shall be referred individually as a "Party" and collectively as the "Parties" herein.
- (k) "**Services**" means any business and/or activities of whatsoever nature undertaken by the Company in respect of the Customer and/or in relation to Goods, including but not limited to land transport, (including unloading and loading), pre delivery inspection (PDI), washing, warehousing, storage, logistics, , customs clearance (where licensed and applicable), cargo management services, and any advice or Information provided by the Company.
- (l) "**SDR**" are Special Drawing Rights as defined by the International Monetary Fund.
- (m) "**Vehicle**" is any vehicle including, but not limited to, any truck head, transporter, lorry, van, trailer, car or railway wagon or any similar transport means and/or equipment utilized by the Company or any of its subcontractors in the provision of the Services.

1.2 Headings of clauses are provided for convenience only and do not affect the interpretation of these Conditions.

1.3 In these Conditions:

- (a) words in the singular shall be deemed to include the plural and vice versa;
- (b) references to persons shall include bodies of persons whether corporate or incorporate;
- (c) the words include(s) or including shall be deemed to have the words "without limitation" following them.

### 2. Application

- 2.1 These Conditions apply to any and all Services provided by the Company and shall (together with any schedule or appendices which the parties agree in writing apply to the Services) constitute the entire agreement between the Company and the Customer in relation to the Services.
- 2.2 These Conditions apply to the provision of the Services to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are contained in the Customer's documentation, or which are implied by statute, trade, custom, practice, or course of dealing.
- 2.3 If the Company and the Customer have signed a specially negotiated agreement, these Conditions shall continue to apply, but such negotiated agreement shall prevail in so far as its terms are inconsistent with these Conditions, but no further.
- 2.4 If any legislation is compulsorily applicable to any Services, these Conditions, shall as it regards such Services shall be read as subject to such legislation and nothing in these Conditions shall be construed as a surrender by the Company of any of its rights or immunities or as an increase of any of its responsibilities or liabilities under such legislation. If any part of these Conditions is repugnant to such legislation to any extent such part shall as it regards such Services be void to that extent but no further.

### 3. Agent or principal

- 3.1 The Company shall be entitled to procure any or all the Services as an agent, or, to provide those Services as a principal, and save where expressly stated otherwise, these Conditions will apply whether the Company provides the Services as an agent or as a principal. Company shall act primarily as principal unless otherwise noted.

### 4. Services as principal

- 4.1 Where the Company contracts as carrier of the Goods under a contract of carriage which is evidenced by a bill of lading, road consignment note or similar transport document ("**WW Transport Document**"), the terms and conditions set out in the WWL Transport Document shall be paramount in so far as such provisions are inconsistent with these Conditions.
- 4.2 When the Company contracts as a principal for any part of the Services, it shall have full liberty to perform such Services itself, or, to subcontract on any terms whatsoever, the whole or any part of such Services.

### 5. Services as agent

- 5.1 Where the Company acts as agent, the Company acts solely on behalf of the Customer in securing any element of the Services.  
The Company shall be entitled, and the Customer hereby expressly authorizes the Company, to enter into contracts with any third parties on behalf of the Customer as may be necessary or desirable to fulfill the Instructions, and whether such contacts as subject to the trading conditions of the parties with whom such contracts are made or otherwise, so that direct contractual relationships are established between the Customer and such third parties.
- 5.2 The Company shall not be liable for the acts and omissions of such third parties referred to in clause 5.1 above.
6. **Special Instructions, Information and Services**
- 6.1 Subject to specific Instructions accepted by the Company in writing or unless otherwise agreed in writing, the Company reserves to itself full liberty as to the means, routes, and procedure to be employed in the provision of the Services.
- 6.2 The Customer shall provide the Company with all necessary Information and Instructions (including but not limited to description, dimensions, weights, and particulars of the Goods) required in order to enable the Company to (i) arrange and safely perform the Services for the Customer and (ii) comply with all laws, regulations, and conditions applicable to the Goods and Services, within all actual and potential countries of dispatch, receipt, transit, discharge and/or delivery.
- 6.3 Information is provided by the Company:
- (a) in good faith, but is not held out to be, nor to be taken as guaranteed, complete, accurate or timely, and no warranty, representation or undertaking whatsoever is given in respect of any Information.
  - (b) for the Customer only, and the Customer shall defend, indemnify, and hold harmless the company for any liability, loss, damage, cost, or expense arising out any other person relying on such Information.
- 6.4 The Customer and the Company may cooperate in the exchange of Information via their respective Information Systems and may enter into separate written agreements regarding such co-operation.
- 6.5 The Company will perform the Services with a reasonable degree of care, diligence, skill, and judgment.
- 6.6 The Customer is fully acquainted with the physical and geographical location and condition of the Facility, including the level and quality of fencing, protection, and surveillance, and agrees that it is adequate for its needs and expectations.
- 6.7 Presence on the Facility, or any loading and/or stowing and/or discharging maneuvers performed by the Customer, or on its behalf, will be at the Customer's risk and cost.
- 6.8 The Company does not undertake that the Goods or any documents shall depart, arrive, or be available on particular dates, nor does the Company accept liability for any delay in performing any Services, whether or not any such delay is caused by the negligence of the Company or the Company's subcontractors.
- 6.9 Subcontracting
- (a) The Company at its discretion may subcontract on any terms the whole or any part of the Services.
  - (b) Every exemption, limitation, condition and liberty contained in these conditions and every right, exemption from liability, defence and immunity of whatsoever nature applicable to the Company or to which the Company is entitled under these conditions will also be available to and will extend to protect: (i) all Subcontractors; (ii) every employee or agent of the Company or of a Subcontractor; (iii) every other Person (other than the Company) by whom the Company or any part of it is undertaken.
- 6.10 Delivery
- (a) The Company is authorized to deliver the Goods at the address nominated to the Company by the Customer for that purpose. The Company will be conclusively presumed to have delivered the Goods in accordance with these conditions if at that address it obtains from any Person a receipt or signed delivery docket for the Goods.
  - (b) If the nominated place of delivery should be unattended or if delivery cannot otherwise be effected by the Company or the Customer otherwise fails to take delivery of the Goods the Company may at its option deposit the Goods at that place (which will be conclusively presumed to be due delivery under these conditions) or store the Goods and if the Goods are stored by the Company the Customer will pay or indemnify the Company for all costs and expenses incurred in or about such storage. In the event that the Goods are stored by the Company the Company will be at liberty to redeliver them to the Customer from the place of storage at the Customer's expense.
7. **Company's Obligations: Limitation of Scope**
- 7.1 Unless as otherwise agreed in writing the Company is not required to maintain or repair any part of the Goods or to provide any power, fuel, or other supplies therefor or to maintain the same at any particular temperature or in any other particular state or condition.
- 7.2 Notwithstanding the foregoing, if the Company does provide any maintenance or repair services or provide any power fuel or other supplies in relation to the Goods, the Customer shall reimburse to the Company any expense reasonably incurred by the Company in taking any such action as aforesaid together with a reasonable charge for so doing.
8. **Obligations of Customer**
- 8.1 The Customer warrants that:
- (a) it accepts these Conditions not only for itself, but also as a duly authorized agent for and on behalf of every other person who is or may become interested in the Goods and anyone acting on their behalf;
  - (b) all Information and Instructions will be provided as required under Clause 6.2 and such Instructions and Information will be complete and accurate;
  - (c) unless otherwise previously agreed in writing, the Customer shall not deliver to the Company or cause the Company to deal with or handle Goods of a dangerous or damaging nature, nor with Goods likely to harbor or encourage vermin or other pests, nor with Goods liable to taint or affect other inventory;
  - (d) the Goods do not require for any operations or transactions affecting the Goods, any special protection or handling (other than as may be agreed in writing between the Company and the Customer) whether arising from, but not limited to, vulnerability to heat, cold, hail, moisture, salt, natural or artificial light or proximity to other goods or from their flammability;
  - (e) the Goods do not require any special license or permit for transportation, exportation, or importation of the Goods and, to the extent required by law or regulation, the Customer has obtained all necessary licenses or permits, including, but not limited to, export, re-export, import, transportation licenses or permits.
9. **General Indemnity**

9.1 The Customer shall defend, indemnify, and hold harmless the Company against all liability, suits, legal proceedings, claims, loss, damage, costs, demands, penalties, demurrage, and expenses (including without limitation reasonable legal expenses) suffered or incurred by the Company as a result of or in connection with:

- (a) the Company acting in accordance with the Customer's Instructions;
- (b) Goods liability except for any allegations of Goods liability arising out of the negligent performance by Company of its obligations herein;
- (c) a Goods defect for which the Customer thereof is responsible;
- (d) the loss, damage, contamination, or soiling caused by the Goods or the Customer, any of its employees, agents, or subcontractors to property, including, but not limited to, the Facility, the Vehicles, other cargo, any container, vessel, or other property owned by the Company or a third party;
- (e) any breach by the Customer of any of the warranties or obligation contained in these Conditions.
- (f) Or any claims by any Customer employee for physical, bodily injuries to such persons arising out of Customer's presence at or use of Company's facility

#### 10. **Removal of uncollected Goods**

10.1 Without prejudice to the right of the Company to levy storage charges, the Customer will ensure that the Goods are collected from the Facility on or before the end of the agreed period for storage, or in the event that no period was agreed within a reasonable period of time of their deposit there ("**Storage Period**").

10.2 If the Goods have remained at the Facility for a period exceeding the Storage Period, then the Company shall be entitled to give notice to the Customer requiring the removal of the Goods by the date stated in the notice ("**The Removal Date**").

10.3 If the Goods remain uncollected after the Removal Date then the Company shall be entitled to continue levy storage charges and it may at its discretion, and without any responsibility or liability attaching to the Company, sell or otherwise dispose of the Goods at the sole risk and expense of the Customer. The proceeds of any such sale shall be used:

- (a) to defray the expense of the sale including any commissions the Company was required to pay;
- (b) to pay any unpaid storage charges;
- (c) to pay any other overdue charges or freight incurred in connection with the Goods sold or any other Goods owned by the Customer and stored or carried by the Company.

10.4 The balance if any will be held for the benefit of the Customer.

#### 11. **Destruction or Disposal of Harmful Goods**

11.1 Where any Goods are, or become noxious, hazardous, inflammable, explosive or in any way dangerous or otherwise likely to cause damage (which includes Goods which are likely to harbor or encourage infection or disease or vermin or other pests) whether alone or in combination with other goods and whether or not by reason of the act or omission of any person, the Company or the person in whose possession the Goods then are shall be at liberty to destroy or otherwise deal with the Goods as in its or his discretion may seem desirable. The Customer shall indemnify the Company against all loss, damage, costs, and expenses arising out of or in connection with such actions.

#### 12. **Duty of the Customer to pay expenses for removal of debris**

12.1 In the event that the Goods are damaged by fire, sandstorms and/or floods or other similar events outside the control of the Company, the Customer shall arrange the collection and lawful disposal of such damaged Goods, and the Company shall be entitled to recover from the Customer all costs whatsoever resulting from the Customer's failure to do so and all costs incurred or suffered by the Company in connection with such damaged Goods, including costs of cleaning and sanitation of the land and/or of the Facilities.

#### 13. **Quotations**

13.1 Unless otherwise expressly stated by the Company, quotations or indications of Charges given by or on behalf of the Company ("**Quotations**") are:

- (a) subject to these Conditions and any specific reservations or conditions contained or referred to in the Quotation;
- (b) provided for information purposes only and any specific reservations or conditions contained or referred to in the Quotation. Quotations are valid for a minimum number of 30 days;
- (c) subject to the right of withdrawal or revision without notice;
- (d) subject to the requirement for publishing and/or filing in accordance with any law, statute, or regulation.

#### 14. **Invoice and Payment Terms**

14.1 Unless otherwise agreed in writing by the parties, invoices rendered by the Company pursuant to these Conditions shall be payable within 7 days of date of invoice.

14.2 All Charges shall be paid immediately when due by the Customer to the Company without reduction or deferment on account of any claim, counterclaim or set off. Payment shall be made in the country, in the manner, and in the currency stipulated in the invoice. All bank charges associated with the making of such payment shall be for the account of the Customer.

14.3 On all amounts overdue to the Company, the Company shall be entitled to interest at the rate advised by the Company in writing, or if no such rate is advised, at the annual rate of 3 (three) per cent above the minimum lending rate set by the national or central bank, as applicable, of the country or territory of the relevant currency, plus reasonable attorney's fees and expenses incurred in collection any sums due. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment.

14.4 The Customer shall be liable for any duty, tax, fee, charge, octroi or outlay of whatsoever nature levied by any authority for or in connection with the Goods or the Services and for any payment, fine, expense, loss or damage incurred or sustained by the Company in connection therewith.

14.5 Payments by the Customer to the Company may never be dependent upon receipt by Customer of payments from third parties, including the Customer's own customer.

#### 15. **Security, Lien, Sale of Goods**

15.1 The Company has a general lien on all Goods and documents relating to the Goods in its possession, not only for any Charges and expenses due thereon, but also for all monies owed by the Customer to the Company on any account. The Company shall be entitled, on at least 21 days' notice in writing to the Customer, to sell by public auction or private treaty or dispose of such Goods or documents at the expense of the Customer and without any liability to the Customer. The Company shall be entitled to apply the proceeds towards the satisfaction of all such Charges, expenses, and monies on whatsoever account owing, and also towards

all charges and expenses arising during the exercise of such lien. If on the sale of the Goods, the proceeds fail to realize the amount due, the Company shall be entitled to receive the difference from the Customer. It is understood that the Company may refuse to release the Goods until all monies owed to the Company have been paid in full.

15.2 If at any time any sum due from Customer to the Company shall not have been paid in accordance with these Conditions, without prejudice to any other rights or remedies the Company may have against the Customer, the Company shall be entitled at any time to suspend the provision of all or any part of the Services.

15.3 All companies/legal entities being a member of the Group will on basis of reciprocity be entitled to make use and invoke the payment securities and liens stipulated in the conditions of other companies in the Group, and will be entitled to enforce securities and liens upon any of the Customer's goods which are held within the Group, i.e. under the custody of other companies in the Group, regardless whether these goods are on the Group's owned, chartered or leased vessels, trucks, trailers, containers, Facilities or terminals.

#### 16. Insurance

16.1 The Company will not take out any insurance, including, but not limited to cargo insurance, on behalf of the Customer and shall only insure its liability in conformity with these Conditions.

16.2 The Customer is advised to obtain appropriate insurance cover at its own cost if the Customer considers the limits of liability set out in these Conditions to be inadequate.

16.3 The Company will maintain adequate Insurance coverage, including but not limited to Employer Liability, and Worker's Compensation Liability Insurance.

#### 17. Exclusions from liability

17.1 Except as otherwise provided by these Conditions, the Company shall not be liable for any delay or non-performance of its obligations, or any loss or damage whatsoever arising from:

- (a) the act or omission of the Customer or any person (other than the Company) acting on its behalf, including, but not limited to the provision of incorrect Information;
- (b) compliance with any Instructions given to the Company;
- (c) insufficient packing or labeling of the Goods, except where such packing or labeling has been performed by the Company;
- (d) handling, loading, stowage or unloading of the Goods by the Customer or any person on its behalf (other than the Company);
- (e) inherent vice of the Goods;
- (f) riots, civil commotion, strikes, lockouts, stoppage, or restraint of labour from whatsoever cause;
- (g) act of war, terrorism or piracy;
- (h) any governmental or administrative regulatory acts;
- (i) fire, flood, hail, storm, industrial fall-out, bird droppings;
- (j) infectious diseases, communicable diseases and/or viruses;
- (k) the breakdown of, accident to, failure or interruption of or reduction in the main electrical, power, water, or communication system supply to the Company and/or subcontractor; or
- (l) any cause, which the Company could not avoid, and the consequences whereof it could not prevent by the exercise of reasonable diligence.

#### 18. Force Majeure

18.1 Notwithstanding any other provision hereof, either Party shall be excused from delays in performance of, or failure to perform any of its obligations under these Conditions due to and for the duration of any event beyond its control and without its fault including, without limitation, flood, earthquake, storm, other act of God, fire, explosion, war, insurrection, civil disorders, embargo, act of government or governmental agency, electronic viruses, interruption in transportation facilities or other similar cause beyond the reasonable control of such Party ("Force Majeure"); provided, however, that the Party so excused shall timely advise the other Party of the circumstances of such event, and shall consult therewith about suitable interim arrangements, which may include mutually acceptable amendments to these Conditions, and provided that the Party so excused shall recommence performance with the utmost dispatch. The obligation of the Parties hereto shall be suspended for the duration of the Force Majeure. Suspension shall not result in an extension of the term of these Conditions. Whenever such cause for failure or delay shall last for more than (60) consecutive days, the other Party may, after the expiration of such period and if such failure or delay still exists, give notice in writing as provided herein to the Party so excused either accepting continued suspension of the Party's performance for a period reasonable under the circumstances or terminating these Conditions without further obligation to the other Party.

18.2 Company shall not be responsible for damages or loss due to acts of God, such as earthquakes or other severe weather conditions, including hail, hurricanes or floods, or due to war, terrorism, riot or insurrection, or due to explosion (unless caused by Company, its employees and/or agents), or due to airborne contamination (including pollution from ships), industrial fallout or radioactive contamination of any kind, or due to acts of government, provided that reasonable precautions have been taken by Company.

#### 19. Liability for loss or damage to Goods or delivery to an incorrect destination

19.1 Subject to the limitations and exclusions of liability contained in these Conditions, and to the extent only that it is proved that the claim arises from the negligence or willful misconduct of the Company, the Company shall be liable for physical loss or damage to the Goods or for delivery of the Goods to an incorrect destination.

- (a) For ground (road) transport, with respect to international transport, the CMR Convention shall also apply; and
- (b) For ground (road) transport, with respect to domestic transport, the applicable local law shall also apply.

19.2 The Company's liability under Clause 19.1 for loss or damage to Goods shall not exceed the lesser of:

- (a) the value of the relevant Goods actually lost (as calculated in accordance with Clause 19.3) or the reasonable cost of repair in the case of damaged Goods; and
- (b) the current SDR equivalent to US\$2,000,000 per event or series of events arising from a common cause.

19.3 For the purposes of Clause 19.2, the value of the Goods actually lost shall be the manufacturing cost or invoice value of the Goods to the Customer.

19.4 The Company's liability under Clause 19.1 for delivery of the Goods to an incorrect destination shall not exceed the cost of transporting the Goods to the correct destination by the originally contemplated mode of transport.

19.5 Save as set out in Clause 19.1, the Company shall not be liable for loss of or damage to the Goods or for delivering the Goods to an incorrect destination howsoever arising (whether caused by negligence, breach of duty in bailment or otherwise).

**20. Liability for loss or damage to property (other than Goods)**

- 20.1 Subject to the limitation and exclusions of liability contained in these Conditions, and to the extent only that it is proved that the claim arises from the negligence or willful misconduct of the Company, the Company shall be liable for physical loss or damage to the Customer's property (other than Goods).
- 20.2 The Company's liability under Clause 20.1 shall not exceed the lesser of the reasonable repair cost or replacement cost (with an item of the same age and in the same condition) of that property and the current SDR equivalent to US\$5,000,000 per event or series of events arising from a common cause.
- 20.3 Save as set out in Clause 20.1, the Company shall not be liable for loss of or damage to the Customer's property (other than Goods) howsoever arising (whether caused by negligence or otherwise).

**21. General liability**

- 21.1 Notwithstanding any other provisions of these Conditions, the Company's liability howsoever arising, whether arising out of any breach of any obligations whether in contract or in tort or by statute, or in connection with the performance or failure or delay in the performance of any of the Services (whether caused by negligence or otherwise) shall be limited so that:
- (a) **THE COMPANY SHALL NOT HAVE ANY LIABILITY FOR ANY LOSS OF PROFIT, LOSS OF SALE, LOSS OF BUSINESS, LOSS OF GOODWILL OR REPUTATION, OR FOR INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL LOSS;**
- (b) subject to Clause 21.1(c), the Company's maximum aggregate liability for all claims (other than those governed by the provisions of a WW Transport Document, the provisions of Clauses 19 or 20) shall be limited to the lesser of (i) the Charges payable in respect of the relevant transaction or (ii) 75,000 SDR in respect of any one transaction;
- (c) in the case of a series of errors and/or omissions which are repetitions of or represent the continuation of an original error, and/or omission, the Company's maximum aggregate liability shall be limited to the lesser of (i) the loss incurred or (ii) 75,000 SDR in the aggregate of any one trading year commencing from the time of the making of the original error, and/or omission.

**22. Company's Liability Limits Available to Third Parties**

- (a) By delivering the Goods to the Company pursuant to these Conditions, the Customer shall be deemed to confer severally upon the Company, the employees and agents of the Company, and upon its or their independent contractors, and upon all other persons who may be required to render services in relation to the Goods in connection herewith, the benefit of all the warranties, representations, limitations and exclusions of or exemptions from liability, indemnities, defenses and rights herein provided for the benefit of the Company.
- (b) The Customer shall defend, indemnify, and hold harmless the Company from and against any claim, cost, or demand whatsoever and by whomsoever made in connection with the Services and /or the Goods to the extent that such claim, cost, or demand is in excess of the liability of the Company under these Conditions. Without prejudice to the generality of this Clause, this indemnity shall cover any claim, costs, or demands in connection with the Services and/or the Goods whether arising from or in connection with the negligence of the Company, its servants, subcontractors, or agents or otherwise.

**23. Notice of claim, time bar**

- 23.1 The Company shall be discharged of all liability and no action shall lie against the Company unless:
- (a) notice of any claim is received in writing by the Company or its agent within fourteen (14) days after the date specified in Clause 23.2 below, except where the Customer can show that it was impossible to comply with this time limit and that the claim has been made as soon as it was reasonably possible to do so, and
- (b) suit is brought in the proper forum within 9 months after the date specified in (b) below.
- 23.2 For the purposes of Clause 23.1, the date shall be:
- (a) in the case of loss or damage to Goods, the date of delivery of the Goods,
- (b) in the case of delay, transport of the Goods to the incorrect destination, the planned date of delivery (if the Company advised the Customer of such a date),
- (c) in any other case, the date of the event giving rise to the claim.

**24. Independent Contractor**

- 24.1 Each Party to these Conditions is an independent contractor with exclusive control and direction of the conduct of its business and the performance of its obligations to the other Party under these Conditions. Each Party is exclusively responsible for labor, social security, commercial, immigration, tax (including, but not limited to value added), civil and criminal liabilities regarding its operation or its performance under these Conditions.

**25. Miscellaneous provisions**

- 25.1 Severance: If any provision of these Conditions is held void or unenforceable in whole or in part, the other provisions of these Conditions and the remainder of the affected provisions shall continue to be valid.
- 25.2 Waiver: No failure or delay by a party in exercising any right or remedy or partial exercise of such right or remedy under these Conditions or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise.
- 25.3 Third parties: Subject to Clause 22, a person who is not a party to the Contract shall not have any rights under or in connection with it.
- 25.4 Variation: Except as set out in these Conditions, any variation, including the introduction of any additional terms and conditions shall only be binding when agreed in writing and signed by the Company and the Customer.
- 25.5 These Conditions shall apply to land-based Services only. Ocean carriage, including vessel loading and vessel discharge are excluded. Ocean based services are subject to the Wallenius Wilhelmsen bill of lading.
- 25.6 The headings of the articles of these Conditions are for convenience only and do not affect the interpretation of the relevant clauses.
- 25.7 The Parties represents and warrants that it currently does, and shall throughout the business relationship: (i) conduct its business in accordance with all laws, rules, legal measures and regulations which are or may be applicable to the business with the Company, (ii) maintain integrity and a high standard of ethics in all its business transactions, (iii) avoid any unlawful or unethical intervention in the political or other affairs of any country, and (iv) comply with any laws relating to anti-bribery and corruption, including without limitation the United States Foreign Corrupt Practices Act ("FCPA") and the United Kingdom Bribery Act 2010 and (v) shall comply with any applicable anti-terrorist financing and asset control laws, regulations, rules and orders, including but



not limited to the U.S. Department of Treasury, Office of Foreign Assets Control regulations and the European Union sanctions or restrictive measures

**26. Applicable Law and Jurisdiction**

26.1 These Conditions, and any claim or dispute arising out of or in connection with the Services shall be governed by, and construed in accordance with, the laws of the country where the Company is incorporated, and the Parties irrevocably submit to the exclusive jurisdiction of the courts of that country.

26.2 The Customer must not impose any requirement on the Company that would directly or indirectly encourage or require the Company or any person on behalf of the Company to speed, drive while fatigued or otherwise perform the Services in an unsafe manner.