

## 1. Interpretation

“**Affiliates**” means Henry Bath & Son Ltd, Henry Bath Ardiye Hizmetleri Limited Sirketi, Henry Bath Italia Srl, Henry Bath BV and Henry Bath Singapore Pte Ltd; “**Authority**” means a duly constituted legal or administrative person acting within its legal powers and exercising jurisdiction within any nation, state, municipality, port or airport; “**BIMCO**” means the Baltic and International Maritime Council; “**Company**” means Henry Bath LLC a Delaware corporation whose address is 2500 Broening Highway, Baltimore, Maryland 21224 USA; “**Container**” means freight container (including without limitation any container, flexitank, trailer, transportable tank, flat, pallet or any article used to consolidate goods) which may carry unique identification numbers and markings, as well as any equipment (including devices which permit its ready handling) forming part thereof or connected thereto; “**Customer**” means any person at whose request or on whose behalf the Company provides any Storage Services; “**Dangerous Goods**” includes (a) goods defined as “Dangerous” or “Hazardous” under any applicable Regulations or Rules (b) goods which contain a latent defect or are or may become of a dangerous, inflammable or radio-active character or damaging to itself or other property when processed or put to normal use, or goods so dangerously packed, or goods likely to harbour or encourage vermin or other pests, or goods which owing to legal, administrative or other obstacles as to their carriage, discharge or otherwise may be detained or cause any other property or person to be detained (c) empty receptacles which were previously used for the carriage of Dangerous Goods unless such receptacles have been rendered safe (d) Goods which are considered to be dangerous or hazardous by any Authority; and (e) Goods, packing materials or transport units that have been in contact with fumigants without the required warning information clearly displayed; “**Goods**” means one or all of the metal and/or commodities in relation to which the Storage Services are provided by the Company and includes any Container, packaging or pallet supplied by or on behalf of the Customer; “**Hague-Visby Rules**” means the provisions of the International Convention for the unification of certain rules relating to bills of lading signed at Brussels on 25 August 1924, as amended by the Protocol made at Brussels on 23 February 1968; “**LME**” means the London Metal Exchange; “**Owner**” means the owner of the Goods and includes any other person who is or may become interested in the Goods; “**Storage Services**” means any business undertaken or any advice, information or services provided by the Company, whether at the request of the Customer or Owner or otherwise, which shall include but not limited to storage, loading, unloading, haulage, stuffing, unstuffing, weighing, restrapping, rebundling, fumigation, assaying, stevedoring, palletizing, depalletising, shrink wrapping, transportation and freight forwarding; “**Warehouse Receipt**” Means warehouse receipt, storage confirmation, release order or other similar document issued by the Company.

- 1.1 Where applicable, words importing the singular include the plural and vice versa; words importing a gender includes every gender and references to persons include bodies corporate and unincorporated.
- 1.2 Clause headings are inserted for convenience only and shall be ignored in the interpretation of this WTC.
- 1.3 Storage of Goods warranted under LME rules and delivery out to the last LME Warrant holder, shall be governed by (i) the LME Exchange rules and regulations including the Warehouse Contract; (ii) the terms on the front and reverse of the Warrant and (iii) the US Standard Contract Terms and Conditions for Merchandise Warehousemen revised November 2008 as amended from time to time.
- 1.4 All other Storage Services provided by the Company, whether gratuitously or otherwise, shall be subject to the terms on the front and reverse of the Warehouse Receipt, issued by the Company and this WTC.

## 2. Owner of Goods

- 2.1 The Customer expressly warrants that it is either the Owner or the authorised agents of the Owner and further warrants that it is authorised to accept this WTC not only for themselves but also as agents for and on behalf of all other persons who are or may thereafter become interested in the Goods.

## 3. Sub-contracting, exemptions and immunities of all servants and agents of the Company

- 3.1 The Company shall be entitled to sub-contract on any terms or rates the provision of the whole or any part of the Storage Services. For the avoidance of doubt, every exemption, limitation, condition and liberty herein contained and every right, exemption from liability, defence and immunity of whatsoever nature shall still be available to the Company notwithstanding the Company's sub-contracting of the whole or any part of the Storage Services.

## 4. Methods, Procedures, Routes and Place of Storage

- 4.1 Subject to express agreement with the Customer, the Company shall be entitled at its absolute discretion to decide on the means, route and procedure to be followed in providing the Storage Services. Notwithstanding the foregoing and without prejudice to the provisions in this WTC, the Company shall be at liberty to depart from the Customer's instructions if, in the opinion of the Company, it is at any stage necessary or desirable in the Customer's interest to do so.
- 4.2 The Company shall have discretion where to store Goods and, with notice to the Customer, to move the Goods from one storage facility to another.

## 5. Packing of the Goods

- 5.1 Except where the Company is instructed in writing by the Customer to pack the Goods, the Customer warrants that all the Goods have been properly and sufficiently prepared, packed, stowed, labelled and/or marked and the preparation,

packing, stowage, labelling and marking are appropriate to any operations or transactions affecting the Goods and in particular to withstand the ordinary risks of handling, storage and carriage.

5.2 The Company shall not be liable for any loss, damage or expenses incurred or suffered by the Customer as a result of the insufficiency of the packing of the Goods and the Customer shall indemnify the Company for any loss, damage or expenses incurred or suffered by the Company as a result of the insufficiency of the packing or labelling of the Goods.

5.3. The Customer warrants that where the Company receives the Goods from the Customer already stowed in or on a Container or any other device constructed for the carriage of goods (each hereafter individually referred to as the transport unit"), the transport unit is in good condition, and is suitable for the carriage of the Goods to the intended destination.

## **6. Instructions and Documents to be provided to the Company**

6.1 The Customer shall ensure that all instructions, information, documents and safety data sheets required to be provided to the Company for provision of the Storage Services by the Company are accurate and adequate and are provided to the Company promptly and in proper time.

6.2 The Customer shall be liable for all consequences arising from the provision of inaccurate, obscure and inadequate instructions, information and/or documents; any failure to furnish any instructions, information and/or documents; or any failure to furnish any instructions, information and/or documents in time.

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

- 6.4 (a) Unless otherwise previously agreed in writing, the Customer shall not deliver to the Company or cause the Company to deal with or handle Dangerous Goods.
- (b) If the Customer delivers to the Company or causes the Company to deal with or handle Dangerous Goods in breach of sub Clause (a) above, the Company shall not be liable for any loss or damage whatsoever caused by or to the Dangerous Goods and the Customer shall defend, indemnify and hold harmless the Company against all penalties, claims, liabilities (whether civil, criminal or otherwise), damages, costs and expenses whatsoever arising in connection with or incidental to such loss or damage, and the Dangerous Goods may without notice be destroyed or otherwise dealt with at the sole discretion of the Company or any other person in whose custody they may be at the relevant time without compensation to and at the cost of the Customer.
- (c) If the Company agrees in writing to accept Dangerous Goods and subsequently, in the sole opinion of the Company, (i) they are deemed to constitute a risk to other goods, property, life or health or (ii) owing to legal, administrative or other obstacles whether as to their carriage, discharge or otherwise they may be detained or cause any other property or person to be detained, they may without notice be destroyed or otherwise dealt with at the expense of the Customer or Owner without compensation or any liability whatsoever attaching to the Company.

6.5 Except insofar as has otherwise been agreed in writing, the Company shall be entitled and the Customer hereby authorises the Company to enter into contracts on behalf of itself or the Customer and without notice to the Customer,

- (a) for the carriage of Goods by any route, means or person;
- (b) for the carriage of Goods of any description whether containerised or not on or under the deck of any vessel;
- (c) for the storage, packing, transshipment, loading, unloading or handling of Goods by any person at any place whether on shore or afloat and for any length of time;
- (d) for the carriage or storage of Goods in Containers or with other Goods of whatever nature; or
- (e) for the performance of any of its own obligations,

and to do such acts as in the sole opinion of the Company may be necessary or incidental to the performance of the Company's obligations.

6.6 The Company shall be entitled but under no obligation to depart from the Customer's instructions in any respect if in the sole opinion of the Company there is good reason to do so in the Customer's interest, to mitigate or prevent damage to property or to prevent injury to persons. The Company shall not thereby incur any additional liability whatsoever, other than its liability (if any) hereunder.

6.7 The Company may at any time comply with the orders or recommendations given by any Authority. The responsibility of the Company in respect of the Goods shall cease on the delivery or other disposition of the Goods in accordance with such orders or recommendations.

- 6.8 If at any time the performance of the Company's obligations, in the sole opinion of the Company or any person whose services the Company makes use of, is or is likely to be affected by any hindrance, risk, delay, difficulty or disadvantage whatsoever and which cannot be avoided by reasonable endeavours by the Company or such other person, the Company may, on giving notice in writing to the Customer or Owner or without notice where it is not reasonably possible to give such notice, treat the performance of its obligations as terminated and place the Goods or any part of them at the Customer's or Owner's disposal at any place which the Company may deem in its sole opinion safe and convenient, whereupon the responsibility of the Company in respect of the Goods shall wholly cease. The Customer shall pay on demand any additional costs of carriage and delivery to and storage at such places and all other expenses incurred by the Company.
- 6.9 Without prejudice to Clauses 6.7, 6.8 and 9.3, the Company shall be entitled but under no obligation, at the expense of the Customer payable on demand and without any liability on the part of the Company to the Customer or the Owner, to sell or dispose (whether by public auction or private treaty or otherwise):
- (a) on giving 7 days' notice in writing to the Customer, of Goods or any part thereof which in the sole opinion of the Company cannot be delivered as instructed; or
  - (b) without notice to the Customer, of Goods which have perished, deteriorated or altered, or are in immediate prospect of doing so or which have caused or may reasonably be expected to cause loss or damage to any person or property or to contravene any applicable laws or regulations.

For the avoidance of doubt, the Company shall be not be required to obtain a court or tribunal order to exercise the Company's rights or entitlements under this Clause.

## **7. Accuracy of Descriptions of the Goods and Quality of the Goods**

- 7.1 The Customer warrants and is bound by the accuracy of all descriptions, values and other particulars and/or information furnished to the Company in respect of the Goods for the purposes of customs clearance or any other purposes whatsoever and the Customer shall indemnify the Company from and against any and all losses, damages, expenses and fines whatsoever arising from the inaccuracy of any descriptions, particulars and/or information furnished, even if such inaccuracy is not due (whether in whole or in part) to any negligence or fault on the part of the Customer.
- 7.2 The Company shall not act as an expert in relation to the nature or quality of the Goods and shall not be required or be obliged to provide any notification to any party whatsoever in relation to the state, nature, chemical content or quality of the Goods.
- 7.3 The Company shall be under no obligation to ensure that the samples of the Goods are identical with or match the Goods as described by the Customer or that the Goods conform with the description of the Goods provided by the Customer.

## **8. Tallying / Weighing / Measuring of the Goods**

- 8.1 All operations such as superintending, sampling, taring, tallying, weighing, measuring, etc., and receiving the Goods under survey, shall be undertaken only on the Customer's specific instructions and all costs thereof and relating thereto shall be payable by the Customer and, if first paid by the Company, shall be reimbursed to the Company by the Customer forthwith upon demand.
- 8.2 Notwithstanding Clause 8.1 above, the Company shall be entitled, but not obliged, and the Customer hereby authorizes the Company to take any action with respect to the Goods which the Company considers to be necessary in the Customer's interest, at the Customer's expense and risk.

## **9. Delivery / Transportation / Loading / Unloading**

- 9.1 A statement by the Customer on the time of delivery of the Goods shall not be binding on the Company and the Company shall not be taken to guarantee the arrival time of the Goods.
- 9.2 In the event that the loading and/or unloading time under any bill of lading and/or charterparty in respect of the Goods is inadequate regardless of the cause thereof, all costs resulting therefrom, including without limitation any demurrage charges shall be borne by the Customer, notwithstanding that the Company was the party that accepted or entered into the bill of lading and/or charter party from which the aforesaid costs arise.
- 9.3 If delivery of the Goods or any part thereof is not taken by the Customer or Owner at the time and place when and where the Company or any person whose services the Company makes use of calls upon the Customer or Owner to take delivery thereof, the Company shall be entitled to store the Goods or any part thereof at the sole risk of the Customer, whereupon the liability of the Company in respect of such Goods shall wholly cease and the cost of such storage and all other expenses and liability whatsoever paid or payable or incurred or which may be incurred by the Company shall be paid by the Customer on demand.

- 9.4 The Company requires minimum 24 hours notice before delivery out. In addition the Customer shall provide
- (a) clear written instructions and details of the party collecting on Customer's behalf;
  - (b) the Warehouse Receipt; and
  - (c) full payment of all outstanding charges relating to the Storage Services up to the date of collection whether relating to the Goods to be delivered out or otherwise.
- 9.5 The Customer shall keep Warehouse Receipts in a safe place to prevent their fraudulent misuse. Loss or theft of a Warehouse Receipt must be notified to the Company immediately.
- 9.6 The Customer may request a rent endorsement to be made by presenting an original Warehouse Receipt and rent payment to the Company or its nominated agent. Rent will continue to be charged from the date the Warehouse Receipt is cancelled up to and including the date of collection.
- 9.7 The Company shall be entitled to treat any form of instructions from the Customer, in respect of delivering out to or holding the Goods for another person, as:
- (a) authority to accept that other person's instructions; and
  - (b) confirmation that the other person has appropriate legal interest in the Goods to give instructions as to their collection.
- 9.8 The Customer shall notify to the Company all disposals of the Goods by sale or otherwise and shall provide the Company with a copy of the Warehouse Receipt showing any new markings that it has made. In the event that the Company is in any doubt as to the entitlement of any party to collect Goods, it shall be entitled to refuse or delay delivery without any liability for any costs and expenses until such doubt can be resolved to the satisfaction of the Company.
- 9.9 Split collections may incur a supplementary charge. The maximum delivery out charge to Free on Truck (FOT) is notified from time-to-time by the Company to the LME and posted on the LME website. Loading into Containers or any other form of conveyance will incur additional charges. It is the responsibility of the Customer to present vehicles for loading promptly at the agreed time. Hauliers are responsible for their own blocking, bracing and securing and ensuring that vehicle payload is within legal limits.
- 9.10 The Goods are not necessarily in free circulation and may require customs clearance and payment of duty, value added tax or other state or national taxes to be arranged and paid for by the Customer before the Goods can be removed from the warehouse.
- 10. Insurance**
- 10.1** THE GOODS ARE NOT INSURED BY THE COMPANY AGAINST LOSS OR DAMAGE AT ANY TIME HOWEVER CAUSED.
- 10.2** The Customer shall self insure or make arrangements to cover the Goods against all insurable risks to their full insurable value (including all duties and taxes)
- 10.3** Any right for the insurer to bring a subrogated claim against the Company shall be excluded.
- 10.4** In the event that the Customer requires the assistance of the Company to take out any insurance on the Goods for and on behalf of the Customer, the Company may upon the written request by the Customer and on terms to be agreed take out insurances on the Goods against such risks as may be notified by the Customer.
- 10.5** Where the Company utilises derricks and/or any other such equipment for carrying out the instructions given by the Customer, it shall be entitled to arrange insurance at the Customer's sole expense to cover the Company's risks arising from the use of such equipment.
- 11. General Indemnities**
- 11.1** The Customer undertakes that no claim shall be made against any director, servant or employee of the Company which imposes or seek to impose upon them any liability in connection with any part or all of the Storage Services undertaken by the Company and if any such claim is made, to indemnify the Company and the said director, servant or employee against all consequences thereof.
- 11.2** The Customer and the Owner shall hold harmless, defend and keep the Company indemnified from and against:
- (a) All liability, loss, damage, delays, costs and expenses whatsoever including without prejudice to the generality of the foregoing, all duties, taxes, imports, levies, deposits and outlays of whatsoever nature levied by any Authority in relation to the Goods and for all payments and fines arising out of the Company acting in accordance with the Customers instructions or arising from any breach by the Customer or Owner of any

warranty or obligation contained in this WTC or from the negligence of the Customer or Owner;

- (b) Without derogation from sub-clause (a) above,
  - (i) any liability assumed or incurred by the Company when by reason of carrying out the Customer's instructions the Company has reasonably become liable or may become liable to any other party;
  - (ii) any claim from any third party arising out of or in connection with a latent defect, inherent vice or poor condition of the Goods.
- (c) All claims, costs and demands whatsoever and by whomsoever made in excess of the liability of the Company under the terms of this WTC regardless whether such claims, costs and demands arise from or in connection with the negligence or breach of duty of the Company its servants, sub-contractors or agents.
- (d) Representations, warranties, advice and information, in whatever form as may be given or provided by the Company for the Customer only and the Customer shall defend, indemnify and hold harmless the Company for all liability, loss, damage, costs and expenses arising out of any other person relying on such representations, warranties, advice or information. Except under special arrangements, representations, warranties, advice and information which are not related to instructions accepted by the Company are provided gratuitously and without liability.
- (e) The Customer and Owner expressly agree that no servant, agent or other person (including any independent contractor) shall in any circumstances be under any liability to the Customer or Owner for any loss or damage or delay of whatsoever kind arising or resulting directly or indirectly from any act, neglect or default on his part while acting in the course of or in connection with his employment or as agent of the Company or otherwise. Without prejudice to the generality of the foregoing every exemption, limitation, condition and liberty herein contained and every right, exemption from liability, defence and immunity applicable to the Company shall also be available and shall extend to protect every such servant, agent or other person (including any independent contractor) and for the purpose of this Clause, the Company is or shall be deemed to be acting as agent or trustee on behalf of and for the benefit of all such servants, agents or other persons (including any independent contractors) and all such persons shall to this extent be or deemed to be parties to the contract between the Company and the Customer or Owner.

In this sub Clause, "contractor" and "contractors" include direct and indirect sub-contractors and their respective servants and agents.
- (f) The Customer and Owner shall solely be liable for demurrage or loss, damage, contamination, soiling or detention before, during or after the carriage of property (including but not limited to Containers) of the Company or any person or vessel referred to herein caused directly or indirectly by the Customer or Owner or any person acting as servants, agents or independent contractors for or on behalf of either of them.

## **12. Lien**

- 12.1 All Goods and documents in the possession, custody and control of the Company or its agents or Affiliates shall be subject to a general lien and right of detention for all sums (including without limitation all rent, costs and charges payable by the Customer) due to the Company at any time and from time to time whether in respect of Storage Services provided or in respect of such Goods or other goods whether in other locations held by Affiliates or otherwise. If the sums due as aforesaid are not satisfied within 7 days of a notice in writing by the Company to the Customer, the Company shall be entitled to sell or dispose of the Goods or documents whether by public auction, private treaty or otherwise, and the proceeds of sale shall be applied in satisfaction of firstly, the costs and expenses of the sale or disposal and secondly, the sums due to the Company (including without limitation all costs and expenses of maintaining or preserving the lien) without any liability whatsoever on the part of the Company to the Customer. In the event that the proceeds of sale are insufficient to satisfy all sums due to the Company, the Company shall be entitled to recover from the Customer all sums which remain outstanding. For the avoidance of doubt, the Company shall not be required to obtain a court or tribunal order to exercise the Company's rights or entitlements under this Clause.
- 12.2 Notwithstanding Clause 12.1 above, when the Goods are liable to perish or deteriorate, the Company's right to sell or dispose of the Goods shall arise immediately upon any sum becoming due to the Company subject only to the Company taking reasonable steps to bring to the Customer's attention its intention of selling or disposing of the Goods before doing so.
- 12.3 The Company shall have the right to enforce against the Customer and Owner jointly and severally any liability of the Customer under this WTC or to recover from them any sums to be paid by the Customer which upon demand have not been paid.

## **13. Containers**

- 13.1 If a Container has not been packed or stuffed by the Company, the Company shall not be liable for loss of or damage to the contents thereof if caused by:
  - (a) the manner in which the Container has been packed or stuffed;
  - (b) the unsuitability of the contents for carriage in Containers;

- (c) the unsuitability or defective condition of the Container provided that where the Container has been supplied by or on behalf of the Company, this paragraph shall apply only if the unsuitability or defective condition (i) arose without any negligence on the part of the Company or (ii) would have been apparent upon reasonable inspection by the Customer or Owner or person acting on behalf of either of them or (iii) arose as a result of the peculiarity of the Goods and such peculiarity is not made known to the Company; or
  - (d) the Container not being sealed at the commencement of any carriage.
- 13.2 The Customer shall defend, indemnify and hold harmless the Company against all liability, loss, damage, costs and expenses arising from one or more of the matters provided for in Clause 13.1 above.
- 13.3 Where the Company is instructed to provide a Container, in the absence of any specific request in writing, the Company is not under an obligation to provide a Container of any particular type or quality.
- 14. General Liability**
- 14.1 THE COMPANY SHALL NOT BE LIABLE FOR ANY LOSS OR DAMAGE TO GOODS TENDERED, STORED OR HANDLED HOWEVER CAUSED UNLESS SUCH LOSS OR DAMAGE RESULTED FROM THE FAILURE BY THE COMPANY TO EXERCISE SUCH CARE IN REGARD TO THEM AS A REASONABLY CAREFUL PERSON WOULD EXERCISE UNDER LIKE CIRCUMSTANCES AND THE COMPANY IS NOT LIABLE FOR DAMAGES WHICH COULD NOT HAVE BEEN AVOIDED BY THE EXERCISE OF SUCH CARE.
- 14.2 THE COMPANY SHALL NOT BE LIABLE FOR LOSS OF GOODS DUE TO INVENTORY SHORTAGE OR UNEXPLAINED OR MYSTERIOUS DISAPPEARANCE OF GOODS UNLESS THE CLAIMANT ESTABLISHES SUCH LOSS OCCURRED BECAUSE OF THE COMPANY'S FAILURE TO EXERCISE THE CARE REQUIRED OF COMPANY UNDER 14.1 ABOVE. ANY PRESUMPTION OF CONVERSION IMPOSED BY LAW SHALL NOT APPLY TO SUCH LOSS AND A CLAIM OF CONVERSION MUST BE ESTABLISHED BY AFFIRMATIVE EVIDENCE THAT THE COMPANY CONVERTED THE GOODS TO THE COMPANY'S OWN USE.
- 14.3 COMPANY SHALL NOT BE LIABLE FOR ANY LOSS OF PROFIT OR SPECIAL, INDIRECT, OR CONSEQUENTIAL DAMAGES OF ANY KIND
- 14.4 THE COMPANY SHALL NOT IN ANY CIRCUMSTANCES WHATSOEVER AND HOWSOEVER ARISING, INCLUDING WITHOUT LIMITATION ANY NEGLIGENCE ON THE PART OF THE COMPANY, ITS SERVANTS AND/OR AGENTS BE LIABLE FOR LOSS OR DAMAGE HOWSOEVER CAUSED TO PROPERTY OTHER THAN THE GOODS THEMSELVES.
- 14.5 WHERE LOSS OR DAMAGE OCCURS TO STORED TENDERED OR HANDLED GOODS, FOR WHICH THE COMPANY IS NOT LIABLE, THE CUSTOMER SHALL BE RESPONSIBLE FOR THE COST OF REMOVING AND DISPOSING OF SUCH GOODS AND THE COST OF ANY ENVIRONMENTAL CLEAN UP AND SITE REMEDIATION RESULTING FROM THE LOSS OR INJURY TO THE GOODS.
- 14.6 If the Company negligently misdelivers Goods, the Company shall pay the reasonable transportation charges incurred to return the misdelivered Goods to the warehouse. If the consignee fails to return the goods, Company's maximum liability shall be for the lost or damaged goods as specified in this clause, and the Company shall have no liability for damages due to the consignee's acceptance or use of the Goods whether such Goods be those of the Customer or another.
- 15. Amount of Compensation**
- 15.1 SUBJECT TO 15.2 BELOW THE CUSTOMER DECLARES THAT DAMAGES ARE LIMITED TO THE LOWER OF THE FOLLOWING
- (I) US\$ 500 PER PACKAGE WHERE A PACKAGE MEANS THE BAR, BUNDLE, SOW, DRUM, BAG OR SUCH UNIT AS GOODS ARE PACKAGED INTO FOR LIFTING; OR
  - (II) US\$ 5,000 PER WAREHOUSE RECEIPT IN REPECT OF ANY ONE CLAIM OR ONE INCIDENT OR SERIES OF RELATED INCIDENTS.
- 15.2 IN THE EVENT OF MULTIPLE CLAIMS BY A CUSTOMER OR OWNER, THE TOTAL OF SUCH CLAIMS FOR DAMAGES SHALL BE FURTHER LIMITED TO US\$ 50,000 REGARDLESS OF THE NUMBER OF WAREHOUSE RECEIPTS HELD BY SUCH CUSTOMER OR OWNER.
- 15.3 THE LIABILITY LIMITS ABOVE MAY BE INCREASED ON PART OR ALL OF THE GOODS, IF A WRITTEN REQUEST IS RECEIVED BY THE COMPANY AT LEAST SEVEN DAYS BEFORE THE INCREASED LIABILITY IS TO BE OPERATIVE. THE COMPANY SHALL MAKE AN ADDITIONAL CHARGE IN ITS DISCRETION BUT BASED UPON THE LIMIT REQUESTED AND THE VALUE OF THE GOODS.
- 16. Notice of claim and filing of suit**
- 16.1 Claims by the Customer and all other persons must be presented in writing to the Company within a reasonable time, and in no event longer than either 60 days after delivery out of the goods by the Company or 60 days after the depositor of record or the last known holder of a Warehouse Receipt is notified by the Company that loss or injury to part or all of the Goods has occurred, whichever time is shorter.
- 16.2 No action may be maintained by the Customer or others against the Company for loss or damage to the Goods stored unless timely written claim has been given as provided in clause 16.1 above of this section and unless such action is

commenced either within nine months after date of delivery out by the Company or within nine months after depositor of record or the last known holder of a Warehouse Receipt is notified that loss or injury to part or all of the Goods has occurred, whichever time is shorter.

## **17. Force Majeure**

17.1 The Company shall be relieved of its obligations, to the extent that their performance is prevented or delayed by, or their non-performance results wholly or partly from, the act or omission of the Customer or its agent or Owner (including any breach by the Customer of these Conditions) or by storm, flood, fire, explosion, civil disturbance, governmental or quasi-governmental action, breakdown or unavailability of premises, equipment or labour, or any other cause beyond the reasonable control of the Company.

## **18. Governing Law & Arbitration**

18.1 This Agreement and the legal relationship between the parties hereto shall be governed by and construed in accordance with the substantive laws of the state where the Warehouse is located, including Article 7 of the Uniform Commercial Code as ratified in that state, notwithstanding its conflict of laws rules. Any lawsuit or other action involving any dispute, claim or controversy relating in any way to this Contract shall be brought only in the appropriate state or federal court in the state where the Facility is located.

## **19. Company acting as Agents**

- 19.1 (a) To the extent that the Company acts as an agent, the Company does not make or purport to make any contract with the Customer for the carriage, storage or handling of the Goods nor for any other physical service in relation to them and acts solely on behalf of the Customer in securing such services by establishing contracts with third parties so that direct contractual relationships are established between the Customer and such third parties.
- (b) The Company shall not be liable for the acts or omissions of such third parties referred to in sub-clause (a) above.
- (c) The Company shall not be responsible for any accident or for any act neglect or default howsoever arising whether wilful or otherwise on the part of its agents or those with whom it contracts in respect of the Goods to be forwarded whether they are carriers by land, sea or air (whether shipowners, lightermen, canal, railway or aircraft operators or others) or warehouse keepers or other persons. The Company shall not be responsible for any money paid or remitted by it on behalf of the senders to any persons in respect of the Goods to be forwarded, whether for the purpose of paying duties or charges in respect of the Goods or otherwise. All the general and special exemptions stated in this Clause shall apply although the particular rates or charges made by the Company to the senders or persons forwarding the Goods may not be identical with the amounts paid by it to such agents, contractors or other persons.
- 19.2 (a) Without prejudice to Clause 6.5, the Company when acting as an agent has the authority of the Customer to enter into contracts on the Customer's behalf and to do such acts so as to bind the Customer by such contracts and acts in all respects notwithstanding any departure from the Customer's instructions.
- (b) The Company only forwards Goods subject to the contracts, terms, conditions, and regulations of the various persons, companies or Authorities into whose possession the Goods may pass.
- (c) The Customer shall defend, indemnify and hold harmless the Company in respect of all liability, loss, damage, costs or expenses arising out of any contracts made in the procurement of the satisfaction of the Customer's requirements.

## **20. Company acting as Principal**

- 20.1 To the extent that the Company contracts as principal for the performance of the Customer's instructions, the Company undertakes to perform or in its own name to procure the performance of the Customer's instructions and subject to the provisions of this WTC shall be liable for the loss of or damage to the Goods occurring from the time that the Goods are taken into its charge until the time of delivery.
- 20.2 Notwithstanding any other provision in this WTC, except for the provisions in Clauses 15-16 above, if it is proven that loss of or damage to the Goods occurred, the Company's liability shall be determined by the provisions contained in any international convention or national law, the provisions of which:
- (a) cannot be departed from by private contract, to the detriment of the claimant; and
- (b) would have applied if the claimant had made a separate and direct contract with the actual provider of the particular service in respect of that service or stage of carriage where the loss or damage occurred and received as evidence thereof any particular document which must be issued if such international convention or national law shall apply.
- 20.3 Notwithstanding any provision in this WTC, but subject to Clauses 20.2 and 20.4, if it can be proved that the loss of or damage to the Goods occurred at sea or inland waterway and the provisions of Clause 20.2 do not apply, the Company's liability shall be limited to those set out in the Hague-Visby Rules and the Company shall be entitled to rely on all defences, exemptions or limitations provided to carriers by the Hague-Visby Rules. Reference in the Hague-Visby Rules to carriage

by sea shall be deemed to include reference to carriage by inland waterways and the Hague-Visby Rules shall be construed accordingly.

20.4 Notwithstanding the provisions of Clause 20.3, if the loss of or damage to the Goods occurred at sea or on inland waterways, and the owner, charterer or operator of the vessel establishes a limitation fund, the liability of the Company shall be limited to the proportion of the said limitation fund allocated to the Goods.

## **21. General Average and Both to Blame Collision**

21.1 The Customer shall defend, indemnify and hold harmless the Company in respect of any general average or any claims of a general average nature which may be made on the Company and the Customer shall provide such security as may be required by the Company in this connection.

21.2 The current Both-to-Blame Collision Clause as adopted by BIMCO is incorporated in and deemed to form part of this WTC. If the vessel comes into collision with another vessel as a result of the negligence of the other vessel and any act of negligence of default of the master, marines, pilot or the servant of the carrier in the navigation or in the management of the vessel, the merchant will indemnify the carrier against all loss or liability to the other or non-carrying vessel or her owner insofar as such loss or liability represents loss of or damage to or any claim whatsoever of the owner of the said goods paid or payable by the carrying vessel or her owner as part of his claim against the carrying vessel or carrier. The foregoing provisions shall also apply where the owner operator or those in charge of any vessels or objects other than or in addition to the colliding vessels or objects are at fault in respect of a collision or contract.

## **22. Miscellaneous**

22.1 Any notice served by post in relation to or in connection with this WTC or the Storage Services hereunder shall be conclusively deemed to have been received on the second day following the day on which it was posted to the address of the recipient last known to the Company. Any notice sent by facsimile transmission by the Customer or the Owner to the Company shall be conclusively deemed to have been received at the time of actual receipt by the Company. Correspondence relating to delivery out, endorsements and transfers may be made by email.

22.2 The waiver by the Company of a breach or default of any of the provisions set out in this WTC shall not be construed as a waiver of any succeeding breach of the same or other provisions herein nor shall any delay or omission on the part of the Company to exercise or avail itself of any right power or privilege that it has or may have hereunder operate as a waiver of any breach or default by the Customer.

22.3 The rights and remedies conferred on the Company under this WTC shall be cumulative and shall be in addition to and without prejudice to any rights or remedies otherwise available (whether at law or in equity) to the Company.

22.4 The defences and limits of liability provided for by this WTC shall apply in any action against the Company whether such action be founded in contract or tort or in whatsoever form.

22.5 If any clause or subclause of any part of this WTC is construed or held to be void, unlawful, invalid or unenforceable by order, decree or judgment of any court of competent jurisdiction the remaining provisions of these Conditions shall not be affected thereby but shall remain in full force and effect.

22.6 Rent shall accrue upon taking ownership of the Goods and shall be paid in full. The Owner or Customer shall not be entitled to assert any credit set-off or counterclaim against the Company in order to justify withholding payment of any such rent in whole or in part.