

## **Definitions:**

1. **Mariners Harbor Cargo Terminal (MHCT)** includes ‘MHCT’ agents, servants or other persons acting on their behalf unless a contrary intention appears below.
2. **Merchant’/‘Shipper’** means any company, partnership or individual contracting with ‘MHCT’ for the provision of services, advise, information or any other business and includes any shipper, consignee, trader, receiver, endorsee or holder of any waybill of lading by way of pledge or otherwise, or any person entitled to take possession of delivery of the goods, or their agent, broker, servants or other persons acting on their behalf.
3. **Shipment’** includes the entirety of the time when the goods are within the custody or control of ‘MHCT’ and includes the warranty made by the ‘Merchant’ as to the nature of the ‘Goods’.
4. **Goods’** includes goods, wares, merchandise and articles of every kind whatsoever received from the ‘Merchant’ and includes any container package not supplied by or on behalf of ‘MHCT’.
5. **Effective delivery’** shall be deemed to take place at the time when the ‘Goods’ are placed at the disposal of the ‘Merchant’ notwithstanding that the final place of delivery is elsewhere.
6. **The headings set out below are for ease of reference only.** It is hereby **agreed** between ‘MHCT’ and the ‘Merchant’ that the following shall apply in all cases.

## **Trading Terms and Conditions**

### **1- Applicability**

- 1.1. The terms and conditions herein stated shall (except as may be otherwise specifically provided herein) govern throughout the entire time the ‘Goods’ are in the custody of ‘MHCT’. ‘MHCT’ shall not be liable in any capacity whatsoever for any delay, non-delivery or miss-delivery or loss of or damage to the goods occurring while the goods are not in its actual custody.

### **2- Contractual Basis**

- 2.1- All activities and services of ‘MHCT’ rendered in the course of its business or otherwise are undertaken strictly subject to these standard trading terms and conditions. Unless agreed or stated otherwise herein ‘MHCT’ undertakes to perform or to procure the performance of the agreed services. Should the services include the movement of ‘Goods’, ‘MHCT’ agrees to perform or procure the entire transport from the place at which the ‘Goods’ are put or delivered into the custody or control of ‘MHCT’ to the place of ‘Effective Delivery’ whichever occurs first.

### **3- Negotiability and Title of the ‘Goods’**

- 3.1- Any waybill of lading issued by ‘MHCT’ in performance of its obligations shall be deemed to be negotiable, unless marked ‘non-negotiable’.
- 3.2- By accepting any waybill of lading, the ‘Merchant’ agrees with ‘MHCT’ that the terms and conditions of the waybill of lading shall constitute both the governing contract and title to the ‘Goods’ and the holder by endorsement shall be entitled to receive or transfer the ‘Goods’ therein mentioned (unless the waybill of lading is marked ‘non-negotiable’).

### **4- Dangerous Goods and Indemnity**

- 4.1- When the ‘Merchant’ hands to ‘MHCT’ goods which are of a dangerous or hazardous nature, ‘Merchant’ shall inform ‘MHCT’ of the exact nature of the danger and indicate if necessary, the precautions to be taken. ‘Goods’ of a dangerous nature which ‘MHCT’ did not know were dangerous may, at any time or place, be unloaded or rendered harmless, without liability or compensation, and the ‘Merchant’ shall be liable for all expenses, loss or damage arising out of their handling over such ‘Goods’ to ‘MHCT’ for carriage, storage or otherwise.

## 5- Merchant Packing

5.1- Without prejudice to clause seven (7) below, the ‘Merchant’ shall be liable for any loss, damage, or injury and extra costs caused by faulty or insufficient packing or labeling or export marking or handling marks of ‘Goods’ or faulty loading or packing within containers or export packages when such loading or packaging has been performed by ‘Merchant’ or on behalf of ‘Merchant’.

## 6- Extent of Liability

6.1- ‘MHCT’ shall only be liable for loss and damage to the ‘Goods’ occurring between the time when ‘MHCT’ receives the goods into their charge and the time of ‘Effective Delivery’.

6.2- ‘MHCT’ shall however, be relieved of all liability for any loss or damage if such loss or damage arose or resulted from:

6.2.1 An act or omission of the ‘Merchant’, his servant, agent or representative;

6.2.2 Fire unless caused by the actual fault or privities of ‘MHCT’;

6.2.3 Perils, dangers or accidents;

6.2.4 An act of God, war or public enemies;

6.2.5 An arrest or restraint of Princes, Rulers or People or seizure under legal process;

6.2.6 Wastage in bulk or weight or any other loss arising from inherent defect, quality or vice of the ‘Goods’;

6.2.7 Riots and or civil commotions;

6.2.8 Strikes or Lockouts or stoppage or restraint of labor from whatever cause whether partial or general;

6.2.9 Latent defects not discoverable by diligence including but not limited to any breakdown in any power or heating or refrigerating units involved in the shipment;

6.2.10 Any other cause or event(s), which ‘MHCT’ could not avoid, and the consequences whereof ‘MHCT’ could not prevent by exercise of reasonable diligence;

6.3- Where under paragraph 6.2 above ‘MHCT’ is not responsible for some of the factors causing loss and or damage, ‘MHCT’ shall be liable to the extent that those factors for which it is liable under this clause has contributed to the loss or damage.

6.4- The burden of proving that the loss or damage was due to one or more of the causes or events named in 6.2 above ( 2.1/ 2.10 ) shall rest upon ‘MHCT’. The cost of proving the causes is for the account of the ‘Goods’.

6.5- No claim of any kind shall be made against any servant of ‘MHCT’ nor shall any claim be made against any holding, subsidiary or associated company of ‘MHCT’. When ‘MHCT’ establishes that in the circumstances of the cause, the loss or damage should be attributed to one or more of the causes, or events specified in 6.2.1 / 2.10 above, it shall be presumed that it was so caused. The ‘Merchant shall, however be entitled to prove that the loss or damage was not, in fact, caused either wholly or partly by one or more of these causes or events.

7- **Force Majeure-** If, at any time, the performance of the contract between ‘MHCT’ and the ‘Merchant’ is, or is likely to be affected by any of the following matters or events (whether existing or anticipated).

7.1- Ice, weather, war, hostilities, blockade, interdiction, quarantine, strikes, lockout or labor troubles (whether ‘MHCT’ or his servant or agent are or likely to be parties thereof or not), civil commotion’s, riots or any other disturbances, epidemic, fever or other illness, route /port congestion; obstructions, or any other cause whatsoever beyond ‘MHCT’s control or knowledge, or shall be considered by ‘MHCT’ and/or the carrier its agent (whose decision shall be absolute and binding on all parties) to be unsafe or likely to prejudice the interests of the carrying aircraft or ship, then the ‘Goods’ may at ‘MHCT’ s option whether or not transport has commenced without notice to the ‘Merchant’ and treat the performance of the contract as terminated and place the ‘Goods’ or any part of them at the ‘Merchants’ disposal at any place or port which ‘MHCT’ may deem safe and or convenient ,whereupon the responsibility of ‘MHCT’ in respect of such goods shall cease. ‘MHCT’ shall nevertheless be entitled to

any payment prescribed under the contract including full freight and charges on 'Goods' received for transportation and the 'Merchant' shall pay any additional costs of carriage to and delivery and storage at such place or port. 'MHCT' will so far as practicable give immediate notice of such termination to the 'Merchant' but shall incur no liability for failure to do so.

7.2- Wholly or in part impeded or impossible within the context of clause 7.1 above 'MHCT' shall take reasonable steps to inform the 'Merchant' (if practicable) of the circumstances and seek further instructions and seek reasonable and feasible resolution.

**8. Limitation Amount**

'Goods' - 'MHCT' shall not be liable in any event and in any case for any loss of or damage to or in connection with the 'Goods' in any amount exceeding \$500.00 United States of America dollars (U.S.D.) or such other amount as may be prescribed by statute relative to the contract, per package or container, or export packages, or in the case of 'Goods' not shipped or stored in packages, containers or packages, per customary freight units, unless the nature of the 'Goods' and evaluation thereof are higher than U.S.D \$500.00 or such other amount as may be appropriate is declared in writing by the 'Merchant' on or prior to delivery to 'MHCT' and an extra charges or freight paid thereon as required by 'MHCT' to obtain the benefit of such higher valuation. Partial losses shall be adjusted pro-rata on basis of the valuation agreed to herein.

9) **Personal Injury, and Death of Third Party Claims** - 'MHCT' shall not be liable in any event and in any case for any physical or mental injury or death or any third party claim in any amount exceeding U.S.D.\$500,000.00 for each accident or occurrence.

10- **Delays, Consequential Loss** - The time for the performance of the contract is not to be considered of the essence and is not guaranteed by 'MHCT'. If 'MHCT' is however held liable in respect of delay, consequential loss and damage other than loss of or damage to the 'Goods', the liability of 'MHCT' shall be limited either to twice the amount of the remuneration payable to 'MHCT' by the 'Merchant' in respect of each service rendered, or to the value of the 'Goods' as determined by local market forces, whichever is less.

11- **Defenses** - The defenses and limits of liability provided for hereunder shall apply in any action against 'MHCT' for loss or damage whether the action is founded in contract or in tort.

12- **Liability of Servants and Sub-Contractors** - Notwithstanding the provisions of clause 6.5 above which are herewith repeated, if any action for loss of or damage to the 'Goods' is brought against any agent employee or representative of 'MHCT', such agent employee or representative shall be entitled to avail him/her-self of the defenses and limits of liability which 'MHCT' entitled to invoke under these 'Standard Trading Terms and Conditions'. 'MHCT' shall be deemed to be acting as agent or trustee on behalf of such agent, employee or representative when entering into the contract evidenced by these 'Standard Trading Conditions' and as such agents, employees or representatives shall to this extent be or deemed to be parties to the contract as evidenced by these conditions.

13- **Method and Route of Transportation** - 'MHCT' reserves to itself liberty as to the means, geographical route and procedure to be followed in the handling, storage and transportation of the 'Goods'. The exercise of any liberty under this clause form part of the agreed transport and or services and or shipment. Such liberty shall include but not be limited to the right to transship 'Goods' from the intended aircraft or ship to another ship or transport unit or aircraft(s) for completion of any sea or inland carriage .If any extra or further unforeseen costs, expenses or charges are incurred by 'MHCT' as a result of the exercise of any liberties hereunder, 'MHCT' shall have the right to recover same from the

‘Merchant’ including the costs and expenses of recovery.

#### **14- Packing and Deck Cargo**

- 14.1- The ‘Goods’ may be packed and stored by ‘MHCT’ in containers or export packages.
- 14.2- ‘Goods’ whether or not packed in containers, may be carried on deck or under deck on and caring ship or aircraft without notice to the ‘Merchant’. All such ‘Goods’ whether carried on or under deck, shall participate in general average and shall be deemed to be within the definition of ‘Goods’ for the purposes of ‘COGSA’.

#### **15- Delivery**

- 15.1 If delivery of the ‘Goods’ or any part thereof is not taken by the ‘Merchant’ at the time and place when and where the ‘Merchant’ is to take delivery thereof, ‘MHCT’ shall be entitled to land and or store the ‘Goods’ at the sole risk of the ‘Merchant, whereupon the liability of ‘MHCT’ in respect of the goods shall cease and the cost of such storage (if paid by or payable by ‘MHCT’ or any agent or sub-contractor of ‘MHCT’) shall forthwith upon demand be paid by the ‘Merchant’ to ‘MHCT’ without discount.

#### **16- Charges and Freight**

- 16.1 All charges due ‘MHCT’ from the ‘Merchant’ are to be paid in cash without discount in the currency of this contract and, whether pre-payable or payable at destination or completion of service(s), shall be deemed earned on receipt of the ‘Goods’ by ‘MHCT’ and shall not be returned or relinquished in any event until all charges have been satisfied.
- 16.2- All insurance’s, dues, taxes charges, fines or other expenses in connection with the ‘Goods’ shall be paid by the ‘Merchant’. If ‘MHCT’ shall make any payment it shall be solely be as the ‘Merchant’s agent and not otherwise and the ‘Merchant’ shall fully reimburse ‘MHCT’ forthwith upon demand for such payment together with ‘MHCT’ s costs and expenses relating thereof.
- 16.3- The ‘Merchant’ shall reimburse ‘MHCT’ in proportion to the payment due ‘MHCT’ for any costs for deviation or delay or any other increase of costs for whatsoever nature caused or contributed to by war, warlike operations, epidemics, strikes, government directions or other matters or events referred to in clause 7 above.
- 16.4- Interest of five (5) percent per 30 days shall accrue from the date when freight and charges are due. Interest shall be compounded and totally payable in full along with other freight charges and debits.
- 16.5- ‘MHCT’ is entitled in case of incorrect declaration of contents, weights, measurement or value of the ‘Goods’ to claim double the amount of freight which have been due if such declaration had been correctly given by the ‘Merchant’. The right to ascertaining the actual facts by ‘MHCT’ is reserved as is the right to obtain from the “Merchant’ the original invoice and to have the contents inspected and the weight, measurement or value verified. The cost of this independent service with its costs for this verification for the account of the ‘Merchant’.

#### **17- Demurrage**

- 17.1- In the event of any sea container(s) or containers or packages carriage by sea, ‘MHCT’ allows five (5) free days from the date of arrival of the carrying ship or aircraft at the port of discharge for the return of the containers to the place nominated by ‘MHCT’ after which demurrage will be charged at US \$15.00 per day per container or pro-rata .The ‘Merchant’ shall pay demurrage on the container in accordance with the terms and conditions of ‘MHCT’s agent for the B/L or aircraft. Such terms and conditions are incorporated herein by reference and can be obtained direct from ‘MHCT’s agent or aircraft agent. All other expenses, costs and storage charges shall be for the account of the ‘Merchant’.
- 17.2- In the event of any break bulk cargo by sea, ‘MHCT’ allows an agreed to free time (dispatch) as indicated in the booking note (B/N) / waybill of lading contract. If after the ‘Notice of Readiness’ (NOR) is tendered to the ‘Merchant’ the cargo is not loaded /unloaded within the free time /dispatch

agreed, regardless of any delay awaiting for berth at or off port or awaiting customs clearance ‘MHCT’ shall assess demurrage per the agreed schedule.

### **18- Lien**

18.1- ‘MHCT’ shall have a lien on the ‘Goods’ and any documents relating thereof for any charges or any amount due under the contract, or any waybill of lading including freight, demurrage, extra costs, charges, storage fees, salvage and general average contribution including special charges and for the cost of recovering the same and ‘MHCT’ can enforce such lien in any reasonable manner which it deems fit without notice to the ‘Merchant’.

### **19- Merchant’s Warranties and Indemnities**

19.1- The ‘Merchant’ warrants and undertakes:

19.1.1- That it is competent and has reasonable knowledge of matters affecting the conduct of its business including ‘MHCT’ s Terms and Conditions of sale and or purchase and all matters thereto;

19.1.2- That it shall give sufficient and executable instructions to ‘MHCT’ ;

19.1.3- That it is the owner of the ‘Goods’ or authorized agent of the owner and that it accepts the ‘Standard Trading Terms and Conditions’ not only for itself but also as agent for and on behalf of the owner of the ‘Goods’ ;

19.1.4- That the description and particulars of any ‘Goods’ furnished by or on behalf of the ‘Merchant’ are full and accurate – *uberrimae fidei* ;

19.2- ‘Merchant’ shall at all times and forthwith upon demand indemnifies ‘MHCT’ against any/all loss ,liability, damage ,cost and expense( incurred or to be incurred) arising from or out of :

19.2.1- Any breach of any warranty or undertaking given by the ‘Merchant’ herein ;

19.2.3- Or the negligence of the ‘Merchant’ ;

19.2.4- Or all claims ,costs and demands in excess of the liability of ‘MHCT’ herein and without prejudice to the generality of this sub-clause ,this indemnity shall include all claims , costs and demands arising from or in connection with the negligence of or breach of the ‘Merchant’, its servants, sub-contractors and or agent(s). A sub-contractor includes direct or indirect sub-contractors and their respective servants and agents, and agents include sub-agents and their respective servants and agents.

### **20- Both to Blame Clause**

20.1- In the case of any carriage by sea, if the carrying aircraft /ship comes into collision with another ship as a result of negligence of the other ship and any act, neglect or default in the navigation or the management of the carrying ship /aircraft, to pay ‘MHCT’ as trustee for the owners or where ‘MHCT’ is not the owner or in possession of the carrying ship, to pay ‘MHCT’ as trustee for the owners and or demise charter of the carrying ship a sum sufficient to indemnify ‘MHCT’ and/or the owner and/or the demise charterers of the carrying ship against all loss or liability to the other or the non-carrying ship or her owners insofar as such loss or liability represents loss of or damage to, or any claim whatsoever of the ‘Merchant’ and set-off recouped or recovered by the other or non-carrying ship or her owner as part of their claim against the carrying ship or her owners or demise charterers of ‘MHCT’. The forgoing provision shall apply where the owners, operators, or those in charge on any ship or ships or objects, other than, or in addition to, the colliding ship or objects, are at fault in respect of a collision, contract, stranding or other accident.

### **21- New Jason Clause**

In the event of any carriage by sea the following provisions shall apply:

21.1- In the event of accident, damage or disaster before or after the commencement of the sea, inland water transport, resulting from any cause whatsoever, whether due to negligence or not, for which or for the consequence of which ‘MHCT’ is not responsible, by statute, contract or otherwise, to the ‘Goods’, the ‘Merchant’ shall jointly and severely contribute with ‘MHCT’ in general average to payment of and

sacrifices, losses or expenses of a general average nature that may be made or incurred and shall pay salvage and special charges incurred in respect to the ‘Goods’.

21.2- If the salving ship is owned or operated by the owners/operators of the salved ship and/or ‘MHCT’, salvage shall be paid for as fully as if said salving ship belonged to a third party or strangers.

## **22- General Average**

22.1- In the case of any carriage by sea the ‘Merchant’ shall indemnify ‘MHCT’ in respect of any claim of a general average nature which may be made on him and shall provide security as may be required by ‘MHCT’ in this connection. General Average shall be adjusted to the York-Antwerp Rules 1974. Adjustment shall be prepared at such port as shall be selected by ‘MHCT’.

## **23- Variation of The Contract**

23.1- Notwithstanding the definition of ‘MHCT’ above, no servant or agent of ‘MHCT’ shall have the power to waive or vary any of the ‘Standard Trading Conditions’ unless such or variation is in writing and has been specifically authorized or ratified in writing by Phoenix Agency International, Inc. (‘PCSL.’) alone and no others.

## **24- Notice**

24.1- Unless notice of loss of or damage to the ‘Goods’ and the general nature of it has been given in writing to ‘MHCT’ or the person referred to in paragraph 6.3 of clause 6 above, at the place of ‘Effective Delivery’ before or at the time of removal of the ‘Goods’ into the custody of the person entitled to delivery thereof under the waybill of lading, or if the loss or damage is not apparent within three (3) working days thereafter, then such removal shall be prima facie evidence of the correct delivery by ‘MHCT’ of the ‘Goods’.

## **25- Time Bar**

25.1- ‘MHCT’ shall be discharged from all liability unless suit is brought within twelve (12) calendar months from the date of ‘Effective Delivery’ of the ‘Goods’. In the case of non-delivery of the ‘Goods’ the period shall begin to run from the date when the ‘Goods’ should have been delivered but in any event shall be brought no later than fourteen (14) months from the date of the delivery of the ‘Goods’ shipped by ‘MHCT’.

## **26- Validity**

26.1- In the event that anything herein contained is inconsistent with any applicable international convention or national law which can not be departed from by private contract, the provisions hereof shall be to the extent of such inconsistency but no further be null and void.

## **27- Jurisdiction**

27.1 Any disputes arising under these ‘Standard Trading Terms and Conditions’ not resolved within 30 calendar days of dispute notification by mutual conciliation shall be decided by arbitration in accordance with the Society of Maritime Arbitrators, Inc.’(SMA), 30 Broad Street, New York, New York 10004, facsimile 212-344-2402 telephone 212-344-2400. The rules and proceedings of the SMA are to apply only.

27.2 Any disputes shall be referred to a single arbitrator to be appointed by both parties (The ‘Merchant’ and ‘MHCT’) hereto.

27.3 Federal Maritime Law of The United States of America to apply.

27.4 If both parties cannot agree upon a single arbitrator within 60 calendar days of the dispute notice to each party, the dispute shall be settled by three arbitrators, each party to appoint one arbitrator, the third designated the Umpire shall be appointed by the two arbitrators so chosen.

27.4.1 No lawyers allowed. Only commercial people with a minimum of fifteen (15) years maritime experience are to be arbitrators and members in good standing of the SMA.

**28- Confidentiality**

28.1 This contract shall be confidential and private between both parties only, no others, including agents, employees and/or their representatives.