



STOLT TANK CONTAINERS

GENERAL TERMS AND CONDITIONS

DEFINITIONS AND INTERPRETATION

- (i) “Affiliate” means any entity that directly or indirectly controls, is controlled by, or is under common control with Stolt Tank Containers B.V.; and “control” has the meaning given in Section 450 of the UK Corporation Tax Act 2010.
- (ii) “Carrier” means Stolt Tank Containers B.V.; provided that, for any particular move of cargo, if the booking summary expressly names another Affiliate of Stolt Tank Containers B.V. as the “carrier,” that named Affiliate shall be the Carrier solely for that move. If no such carrier is named on the booking summary, Stolt Tank Containers B.V. is the Carrier by default.
- (iii) “Carrier Group” means any entity controlled by, controlling or under common control with the Carrier; and control shall have the meaning given to it in Section 450 of the UK Corporation Tax Act 2010.
- (iv) “Compulsory Legislation” means an international convention or national law which applies compulsorily to any element of the Services and which cannot be departed from.
- (v) “Container” means any container, tank container, isotank or trailer used to carry the Goods. Any reference to “Package” in US COGSA or the Compulsory Legislation shall mean Container in these Terms.
- (vi) “Contract” means the contract between the Carrier and the Merchant for the Services, which is deemed concluded on the earliest of:
 - (a) when a booking summary or written confirmation of booking details is issued by or on behalf of the Carrier (including by email); or
 - (b) when the Carrier begins moving the first of any Containers to be provided to the Merchant for the carriage of the Goods; or
 - (c) if no Container is to be provided by the Carrier, when the Goods are received and accepted for the Services by or on behalf of the Carrier;and shall be comprised of: (1) the most recent booking summary or written confirmation; (2) the quote confirmation; (3) the Transport Document (when one is issued); (4) these Terms; and (5) the Tariff. However, the Carrier’s responsibility and/or liability to the Merchant or the Goods as set forth in Section 13 herein shall commence only from the earliest of (b) or (c) above.

In case of a conflict between any of the aforementioned documents, they shall take precedence in the order they are listed.
- (vii) “Dangerous Goods” means Goods classified or otherwise regulated as dangerous goods (or hazardous materials) for transport under applicable transport regulations, including the IMDG Code, IATA DGR, ADR, ADN, and 49 CFR, as amended. For the avoidance of doubt, Dangerous Goods are a subset of Hazardous Goods.
- (viii) “Demurrage” means the demurrage charges payable by Merchant in respect of any Container supplied by or on behalf of the Carrier, after the expiry of “Free Days” at the rate shown on Carrier’s latest Quote Confirmation.
- (ix) “Free Days” means the period of time offered by the Carrier to the Merchant free of charge, beyond which additional charges such as, but not limited to Demurrage, will be due to the Carrier.

- (x) "Goods" means the whole or part of the cargo received from the Merchant and includes any Container supplied by or on behalf of the Merchant.
- (xi) "Hazardous Goods" means any Goods that are, or may become, hazardous, dangerous, flammable, explosive, radioactive, corrosive, toxic, reactive, environmentally harmful, or that otherwise present a risk of damage to any person, property, the environment, or to Containers or conveyances, whether or not they are regulated as Dangerous Goods.
- (xii) "Joint Sampling and Analysis" means an independent surveyor drawing samples of the Goods from the Container to be analyzed at an independent laboratory during the presence of each Party's appointed independent surveyor to witness the sampling procedure and lineage, opening, preparation, testing and analysis of the samples.
- (xiii) "Merchant" includes the shipper, the consignee, the receiver of the Goods, the holder of the Transport Document, any person owning or entitled to possession of the Goods or the Transport Document as well as the customer (to the extent the term is used in the Contract) and any person subrogated to the rights of any such person, and any agent of the foregoing.
- (xiv) "Merchant Arranged Services" means any operations or services (including all related documentary, customs and information technology processes used or produced) undertaken by or on behalf of the Merchant for Goods in Carrier Owned Containers.
- (xv) "Multimodal Transport" arises if the Services involve more than Port to Port Carriage.
- (xvi) "On-Carriage Move ("OCM") means any added Services, upon request of the Merchant, to be performed by or on behalf of the Carrier in respect of the Goods after the original Contract concludes. This shall be documented in a written OCM Contract. The Merchant shall complete and return the Carrier's OCM Contract on their letterhead prior to the start of OCM services by the Carrier.
- (xvii) "Party" means any of the Carrier, Merchant or Performing Party, together the "Parties".
- (xviii) "Performing Party" includes owners, charterers and operators of vessels (other than the Carrier), stevedores and/or terminal operators, any rail, road or air carriers who perform the Contract, including their direct and indirect sub-contractors, servants and agents.
- (xix) "Port to Port Carriage" arises if (i) the port of loading and the port of discharge are indicated and (ii) no load place or delivery place is indicated on the Transport Document.
- (xx) "Relevant Authority" means any authority having legal jurisdiction over the Services and/or the Goods.
- (xxi) "Services" means any operations or services (including all related documentary, customs and information technology processes used or produced) undertaken by or on behalf of the Carrier in respect of the Goods.
- (xxii) "Tariff" means the Carrier's Tariff which is on file with the U.S. Federal Maritime Commission, as well as all of Carrier's accessorial tariffs globally.
- (xxiii) "Terms" means these General Terms and Conditions.
- (xxiv) "Transport Document" means the waybill or bill of lading issued by or on behalf of the Carrier in relation to the Goods.
- (xxv) "US Carriage" shall mean carriage to, from or within the United States.
- (xxvi) "US COGSA" shall mean the United States Carriage of Goods by Sea Act, approved April 16, 1936, which applies contractually to the Contract and all Transport Documents.
- (xxvii) "Waterborne Carriage" means the carriage of Goods by sea or inland waterways.

- (xxviii) Any words following the word “including” shall be interpreted without limitation to the generality of the preceding words.
- (xxix) All persons defined as “Merchant” shall be jointly and severally liable to the Carrier for the fulfilment of the Merchant’s obligations.

CARRIAGE OF GOODS

1. SUPPLY OF CONTAINERS

- 1.1. Unless otherwise agreed in the Contract, the Carrier shall supply (or arrange to be supplied) and the Merchant shall receive the Containers.
- 1.2. If the Carrier supplies Containers to the Merchant, Demurrage shall be paid by the Merchant after the expiry of Free Days on the terms set out in the Contract.
- 1.2.1. “Free Days Origin” starts when the Container is received by the Merchant and continues until the Container is loaded onboard at the port of exit and the vessel sails.
- 1.2.2. “Free Days Destination” starts at the on-carriage location or, if no on-carriage location is named, when the Container is discharged at the port of entry.

Time at destination counts until return of the Container pursuant to Section 6 of these Terms. Weekends, public and religious holidays are counted against the Free Days allowed. Quay rental at the port of exit or port of entry is not included. Unless otherwise agreed, the cost will be invoiced separately.

2. FILLING AND SEALING OF CONTAINERS AND GOODS

- 2.1. The Merchant shall be responsible for:
- 2.1.1. providing, promptly when requesting a quote or making a booking request and always upon request, the Carrier with information, instruction, and documents for the proper handling, stowage and carriage of the Goods, including precautions that should be taken by the Carrier or any Performing Party;
- 2.1.2. providing the Carrier with information needed by the Carrier to comply with any applicable law, regulation or requirements of public authorities when making a booking request and at any time upon request;
- 2.1.3. properly ensuring that all necessary documentation from the Carrier has been received, and the information on such documentation satisfies Merchant’s requirements;
- 2.1.4. properly ensuring the Goods are fully compatible with the requested type of Container and any connected equipment and accessories (the Carrier may at its sole discretion decline carriage of any Goods that are or may become incompatible);
- 2.1.5. properly inspecting the Container, including its components, and that it is sound and suitable for use for carriage and unloading of the Goods;
- 2.1.6. properly filling and unloading the Goods into and from any Container, for properly closing all valves on completion of filling and unloading, and for properly and sufficiently labelling, placarding, sealing and/or marking the Goods and the Containers;
- 2.1.7. properly filling the Container within the minimum and maximum allowed limits under any applicable rules governing the mode of transportation;
- 2.1.8. drawing representative samples of Goods from the Container after filling is complete, and safely retaining those samples for ninety (90) days;

- 2.1.9. properly ensuring, after filling the Container, that no residue of the Goods remains in the bottom discharge valve prior to closing the valve;
- 2.1.10. properly sealing all filled Containers using high security seals with the seal numbers shown on the Transport Document (when issued); and
- 2.1.11 ensuring a Kosher Certificate, if required, is received from the Carrier prior to filling Goods into a Container.
- 2.2. If compressors, flexible hoses, couplings and/or other equipment are required for loading or discharge and are supplied by the Carrier, the use of such equipment is at the sole risk of the Merchant.
- 2.3. If any assistance is given by the driver at the Merchant's loading facility and/or at the place of unloading, the driver does so as the Merchant's agent.

3. STOWAGE OF CONTAINERS AND GOODS

- 3.1. Containers may be carried on or under deck without notice to the Merchant and at Merchant's risk, unless expressly stated on the Transport Documents.
- 3.2. Goods carried on deck shall be subject to the same liability regime for loss or damage or delay as Goods carried under deck.

4. TRANSPORT OF CONTAINERS AND GOODS

- 4.1. The Goods may be carried by any route whatsoever and by any mode of transport whatsoever, at the Carrier's sole discretion.
- 4.2. The Carrier may, at any time and without notice:
 - 4.2.1. transship the Goods and/or substitute any mode of transport at any time;
 - 4.2.2. change the pre-carriage and/or on-carriage location;
 - 4.2.3. unload and re-load the Goods at any place or port (whether or not named on the Transport Document) and/or store the Goods using any means of storage at any port or place.
- 4.3. For Waterborne Carriage, the Performing Party may (i) sail with or without pilot, proceed, return to and stay at any port or place whatsoever, once or more and in any order (whether towards or away from the port or place of discharge), proceed at any speed, undergo repair, adjust equipment, dry dock, tow or be towed, assist other vessels in any situation, deviate for the purpose of saving life or property or of landing ill or injured persons, and call for fuel at any port(s) or place(s); and (ii) tender Notices of Arrival to the Carrier. The Merchant shall remain responsible for being informed about the arrival of Goods at the port of delivery.
- 4.4. The Carrier may comply with the orders or recommendations of any actual or purported government or Relevant Authority, or any person or body with the right to give orders or recommendations.
- 4.5. Anything done or not done in accordance with this Clause, or any resulting delay, shall be part of the Services and not a deviation.

5. DELIVERY OF CONTAINERS AND GOODS

- 5.1. The Goods shall be deemed delivered upon the earlier of:
 - 5.1.1. as soon as they have (i) for Port to Port Carriage, been unloaded from the vessel at the port of discharge or (ii) for an OCM, arrived at the delivery place according to the Transport Document or OCM Contract.; or

- 5.1.2. (where the Carrier is required or permitted by law or custom to release the Goods to port or other authorities of that port or delivery place) as soon as the Goods have been released or are in the control (physical and/or legal) of the port or other authorities, at any location;
- at which point the Services and the Carrier's responsibility for the Goods ends.
- 5.2. Upon delivery, the Merchant shall:
- 5.2.1. inspect the Container and ensure it can be safely unloaded;
 - 5.2.2. verify that the Goods are in a sound and acceptable condition;
 - 5.2.3. ensure that the proper unloading procedures are agreed and followed;
 - 5.2.4. ensure that the Container is directed to the correct site location/discharge point;
 - 5.2.5. discharge the Goods into the correct storage tank, truck, railcar or plant facilities; and
 - 5.2.6. prior to accepting or commencing unloading, verify that shipment particulars, including Container number and seal number, Transport Document number (or, if no Transport Document is issued for an OCM move, the OCM Contract), proper shipping name, UN number, class and packing group (if Dangerous Goods), quantity/weight, and all required placards, marks and labels, exactly match the delivery paperwork and the physical Container. If any discrepancy is found, the Merchant shall not accept or unload the Goods and shall promptly notify the Carrier for instructions.
- 5.3. If the Goods are not discharged by the Merchant upon delivery:
- 5.3.1. Demurrage shall accrue; and/or
 - 5.3.2. without notice to the Merchant, the Carrier may store the Goods anywhere and by any means (including commingling) at the sole risk of the Merchant. Any and all costs and expenses arising shall be paid by the Merchant.
- 5.4. If the Goods are not discharged by the Merchant within ten (10) days of delivery for any reason, including but not limited to:
- 5.4.1. the person entitled to them under the Contract has not claimed delivery; or
 - 5.4.2. the person claiming to be entitled to the Goods has not properly identified itself;
- the Carrier may release (and therefore deliver) the Goods according to instructions from the Merchant or a party designated by the Merchant to issue such instructions, provided that any security required by the Carrier has been provided in advance.
- 5.5. Abandonment.
- 5.5.1. Abandonment Triggers. The Goods will be deemed irrevocably abandoned by the Merchant upon the occurrence of any of the following events:
- (i) Post-arrival (destination) inaction: the Goods are not discharged within fifteen (15) days after delivery; or
 - (ii) Pre-shipment (origin) inaction: the Goods have not been tendered for carriage (including gated-out to port or released to a line-haul carrier) for any booked or requested movement within thirty (30) days after the earlier of (i) the date the Container was first made available to the Merchant for the movement, or (ii) the latest shipment/ETD date stated in the Booking Summary or Quote Confirmation; and for these purposes the Goods are deemed not tendered where the Carrier withholds tender in reliance on its lien or other contractual rights due to the Merchant's non-payment or failure to satisfy preconditions to carriage.

- 5.5.2. Carrier's Remedies. On or after any Abandonment Trigger, the Carrier may, at its sole discretion and without prejudice to any other rights (including its lien): discharge, store, re-locate, re-export, sell (by private or public sale in such manner as the Carrier considers commercially reasonable), abandon or otherwise dispose of the Goods; (b) devan, sample, neutralize or render the Goods harmless; (c) return the Container to an STC-designated depot; and/or (d) appoint surveyors/agents to act on its behalf. No notice to the Merchant is required, except to the extent mandatory law requires otherwise.
- 5.5.3 Charges Continue; Risk and Expense. All actions taken under this clause are at the Merchant's sole risk and expense. The Merchant remains responsible for all costs arising from storage, handling, disposal, or sale of the Goods. Demurrage and any related charges (including storage and handling) for a Container will continue to accrue until the earlier of (i) such Container being returned in accordance with Section 6 or (ii) the Goods being sold, abandoned, or otherwise disposed of by the Carrier and such Container is in the Carrier's possession.
- 5.5.4 Application of Proceeds; Shortfall. The Carrier may apply any proceeds of sale to (i) all costs and expenses of storage, handling, disposal, sale, environmental remediation and legal fees; (ii) Demurrage, freight and all other amounts due to the Carrier; and (iii) any other sums due under the Contract. Any surplus shall be held for the Merchant without interest; any shortfall shall remain immediately due and payable by the Merchant.
- 5.5.5 Mandatory Law. Nothing in this clause prevents the Carrier from complying with orders of any Relevant Authority or limits any rights or defenses available under Compulsory Legislation.
- 5.6 If at any time in the opinion of the Carrier the Goods are likely to deteriorate, become dangerous, harmful to the environment, the public or the Container itself, or become worthless, the Carrier may, at its sole discretion and without prejudice to any other rights it may have, discharge, sell, abandon or otherwise dispose of the Goods without notice to the Merchant.
- 5.7 If a deposit is required to be paid before a Container can be released to the Merchant, the Merchant shall pay the deposit on demand directly to the demanding party. Any and all losses, damages, expenses incurred by the Carrier in connection with the deposit shall be borne by the Merchant. Neither the Merchant nor its representative shall request the release of the deposit unless all outstanding accounts with the Carrier have been settled.
- 5.8 Should OCM be requested by the Merchant, then the Terms shall extend beyond the completion of the Transport Document and remain applicable after the Carrier regains custody and control and throughout the duration of the OCM until all Containers are delivered.

6. RETURN OF CONTAINERS

- 6.1. After delivery, the Merchant shall return the Carrier's Container(s):
- 6.1.1. in the same order and condition as received (normal wear and tear excepted); and
- (i) empty (with not more than 19 litres (5 U.S. gallons) of Goods remaining in the Container after discharge); or
 - (ii) free of labels, clean and in a dry condition (except that Containers carrying Dangerous Goods must retain placards and proper shipping name labels),
- to the Carrier's assigned depot or to another mutually agreed location.
- 6.2 Demurrage shall be payable until the Container is returned in accordance with Clause 6.1.
- 6.3 For the avoidance of doubt, should residue in any Container exceed 19 litres (5 U.S. gallons), in addition to Demurrage the Merchant shall be responsible for any and all expenses for additional cleaning, including but not limited to the drumming, trucking and disposal of the residue.
- 6.4 The Merchant shall be liable for all lost or damaged Containers. If, in the Carrier's reasonable judgment:

- 6.4.1 the damage can be made good, then the Merchant shall pay the Carrier for such repair costs, as well as all Demurrage charges until repairs are completed and the Container is returned to the Carrier in accordance with Clause 6.1;
- 6.4.2 the Container is a total loss (constructive or otherwise), the Merchant shall compensate the Carrier (without consideration of market value) by paying the replacement cost value of the Container without the right to deduct for any depreciation;
- and Merchant shall continue paying all Demurrage charges until the replacement cost value is paid to Carrier.

FILLING AND DOCUMENTATION OF GOODS AND CONTAINERS

7. WEIGHT OF LOADED CONTAINERS

- 7.1. Before loading aboard the vessel, the Merchant shall provide the Carrier with the verified gross weight of each laden Container, in accordance with the International Convention for the Safety of Life at Sea together with the associated guidelines published as MSC.1/Circ. 1475, as amended from time to time (together "SOLAS").
- 7.2. Should the Merchant fail to comply with this Clause or where the Carrier reasonably believes the verified gross weight information provided is inaccurate or incomplete, the Carrier may, without notice to and at the cost (including Demurrage and all associated charges) and risk of the Merchant:
- 7.2.1. establish the total gross weight of each loaded Container carried pursuant to this Contract in accordance with SOLAS; and/or
- 7.2.2. refuse to load the Container(s) on board the vessel (if the Containers are not yet loaded) or, if the Containers are loaded, arrange for the Containers to be landed and stored, and such landing and storage shall be deemed to constitute due delivery of the Goods under the Contract.

8. DECLARED VALUE OF GOODS

If the value of the Goods has been declared by the Merchant in writing before shipment and inserted on the face of the Transport Document, and extra freight (as per the Quote Confirmation or any applicable Tariff) has been paid thereon and the Carrier has consented to such declared value, the amount of the declared value shall be substituted for the limits laid down in these Terms.

9. HAZARDOUS AND NON-HAZARDOUS GOODS

- 9.1. *Safety Data Sheets, Dangerous Goods Declarations, and Cargo Information.*
- 9.1.1 The Merchant shall supply to the Carrier, for all Goods (hazardous and non-hazardous), a current Safety Data Sheet (SDS) compliant with applicable laws for the countries of origin, transit and destination and for maritime and inland carriage (including IMDG/49 CFR/ADR/ADN), in English at a minimum, and issued or revised within the last three (3) years or otherwise certified in writing by the Merchant to be current as of the booking date. The Merchant shall provide the SDS to the Carrier at the time of booking.
- 9.1.2 *Dangerous Goods Documentation.* If the Goods are classified as Dangerous Goods under the IMDG Code or any other applicable transport regulation, the Merchant shall, in addition to the SDS, provide:
- (a) a fully compliant Dangerous Goods Declaration (DGD) in accordance with the IMDG Code (or other applicable modal regulations);
- (b) any inhibitor certificate, temperature control instructions, or other special certificates required by law or by the Carrier for safe transport and storage; and
- (c) any other documentation required by applicable regulations for the declared class, packing group, and UN number.

The Merchant shall provide the DGD and any related certificates to the Carrier no later than the Carrier's published documentation cut-off for the intended shipment.

- 9.1.3 *No Disclaimers Effective as to Carrier.* Any disclaimer of accuracy, warranty, responsibility, or liability, or any "guidance only" language appearing in an SDS or other document supplied by or on behalf of the Merchant, will be ineffective as between the Merchant and the Carrier. The Merchant's obligations, representations, warranties, and indemnities under these Terms prevail to the extent of any inconsistency.
- 9.1.4 *Merchant Warranties.* The warranties applicable to the obligations in this Section 9 are set out in Section 11, including, without limitation, Sections 11.1.2, 11.1.3, 11.1.4, and 11.1.6.
- 9.1.5 *Duty to Update.* The Merchant shall promptly, and in any event before the applicable cut-off, provide a revised SDS and written notice to the Carrier upon becoming aware of any change to the hazard classification, handling, emergency response or transport requirements for the Goods, or if any information previously supplied is or becomes inaccurate or incomplete. If such information is provided after the cut-off, the Carrier may take any action it considers necessary for safety or compliance (including suspension, roll-over, cancellation, discharge, or disposal), and the Merchant shall be responsible for all resulting costs, charges, and liabilities.
- 9.1.6 *Right to Refuse/Suspend; Cost Recovery.* The Carrier may, in its sole discretion, refuse or suspend carriage or storage of the Goods if the SDS is missing, incomplete, out of date, internally contradictory, or contains disclaimers that could cast doubt on required hazard information. All resulting and related costs (including depot handling, storage, disposal, diversions, inspections, delays, and administrative time) will be for the Merchant's account.
- 9.1.7 *Indemnity.* The Merchant shall defend, indemnify and hold harmless the Carrier Group from and against all losses, damages, liabilities, fines, penalties, clean-up and remediation costs, third-party claims, personal injury, property or equipment damage (including to Containers and fittings), and all related legal and expert fees arising out of or in connection with: (i) any inaccuracy, omission or misleading statement in an SDS, DGD, or other information supplied by or on behalf of the Merchant; (ii) the Merchant's failure to provide timely updates; or (iii) the Merchant's failure to stabilize or inhibit the Goods as warranted.
- 9.1.8 *Precedence.* In the event of any inconsistency between (i) an SDS or any document supplied by or on behalf of the Merchant (including any disclaimer contained therein) and (ii) these Terms, these Terms will prevail as between the Merchant and the Carrier.
- 9.1.9 *Carrier's Discretion.* For the avoidance of doubt, the Carrier retains sole discretion whether to accept any Goods for carriage or storage, and may at any time decline, suspend, roll, or cancel a shipment where, in the Carrier's opinion, this is necessary for safety, security, legal compliance, operational, or commercial reasons. Any decline, suspension, roll, or cancellation under this Clause is without liability to the Carrier and without prejudice to the Carrier's rights under these Terms.
- 9.2 Goods shipped in breach of Clause 9.1 or the warranties in Section 11 may, at any time and at the Merchant's risk and cost, be landed at any place or port, neutralized, destroyed, or otherwise rendered harmless by the Carrier, in each case as the Carrier considers necessary for safety or legal compliance and subject to any Compulsory Legislation, without compensation to the Merchant and without prejudice to the Carrier's right to freight and other amounts due.
- 9.3. Any and all costs, liabilities, increased insurance premia, fines, penalties, losses, damages, and expenses (including storage, handling, disposal, diversions, inspections, surveys, and reasonable legal and expert fees) incurred by the Carrier in connection with any actual or alleged breach of Clause 9.1 or of the warranties in Section 11 shall be for the Merchant's account, whether or not such breach is ultimately established.
- 9.4 The Carrier's rights under this Section 9 are cumulative and not exclusive and are without prejudice to any other rights or remedies (including, without limitation, its rights under Sections 5.6, 12, 17, and 18).

10. ISSUANCE OF TRANSPORT DOCUMENTS BY CARRIER

- 10.1. When a Transport Document is issued, the Carrier will issue a waybill in respect of the Goods. No bill of lading will be issued unless the Carrier expressly agrees to do so in writing.
- 10.2. The Carrier will only issue substitute waybills or bills of lading at its sole discretion and subject to the person making the request providing the Carrier with (i) the full set of the original waybills or bills of lading and (ii) a full indemnity issued by a first class bank acceptable to the Carrier for all and any liability and expenses arising out of the request for substitute waybills or bills.

WARRANTIES, OBLIGATIONS, LIABILITIES AND REMEDIES OF THE PARTIES

11. MERCHANT'S WARRANTIES

- 11.1. The Merchant warrants that:
 - 11.1.1. it has the authority to enter into the Contract on behalf of, the owner of the Goods and any person entitled to possession of the Goods and/or the Transport Document or the person who is or may become interested in the Goods and/or the Transport Document;
 - 11.1.2. the description, condition, quality, quantity and value of the Goods (including the verified gross weight information provided under Clause 7) and the marks, number, quantity, weight and any statement as to the contents of Containers are full and correct;
 - 11.1.3. any inhibitor necessary for the safe carriage of the Goods will be effective for the entire duration of time the Goods are in the possession of Carrier;
 - 11.1.4. the Goods and the Containers have been properly and sufficiently prepared, labelled, placarded, sealed and/or marked by or on behalf of the Merchant in compliance with all applicable laws;
 - 11.1.5. the Goods will not cause loss, damage or expense to the Carrier of any Performing Party, or any vessel or other conveyance (including Containers) used in the carriage of the Goods or any other property, or to any other cargo;
 - 11.1.6. all information, documentation, and certifications supplied under Section 9 (including but not limited to SDS, DGD, inhibitor details, and updates) are true, complete, current, and not misleading, and that the Goods have been properly classified, packaged, stabilized, and inhibited for the entire planned transportation and storage window;
 - 11.1.7. in performing its duties pursuant to the Contract, the Merchant will comply with all applicable laws without jurisdictional limitation, including but not limited to sanctions and laws regarding the import and export of goods ("Restricted Trade Laws")
 - 11.1.8. upon request, the Merchant will provide copies of all licences, permits and consents related to Restricted Trade Laws;
 - 11.1.9. neither the Merchant nor any of the parties mentioned in Section 11.1.1 is a Prohibited Person, meaning (i) an individual or entity located in, or an individual or entity controlled by an individual or entity located in, a jurisdiction subject to sanctions by the United States (collectively, "Prohibited Jurisdictions"); (ii) an individual or entity that appears on the U.S.OFAC list of Specially Designated Nationals and Blocked Persons or any other sanctions-related list maintained by the U.S. federal government, the United Nations, the United Kingdom or the European Union ; (iii) an entity that is owned, directly or indirectly, 50% or more by an individual or entity described in subsection (i) or (ii) of this clause; or (iv) an entity in which individuals or entities described in subsection (i) or (ii) of this clause own, directly or indirectly, an aggregate interest of 50% or more;
 - 11.1.10. the Merchant will not order the handling, storage or carriage of Goods on behalf of, or for the benefit of, (i) a Prohibited Person, or (ii) an individual or entity controlled by a Prohibited Person;
 - 11.1.11. the Merchant will only instruct the Carrier to carry lawful Goods and to trade in lawful places;

- 11.1.12. the Merchant will not instruct the Carrier and the Carrier shall not be required to engage in activities that (i) would violate applicable Restricted Trade Laws, including engaging in transactions involving Prohibited Jurisdictions; or (ii) could result in the Carrier or any of the Performing Parties or their insurers, re-insurers or banks becoming the subject of a government enforcement action or identified on any sanctions-related list maintained by the U.S. federal government, the United Nations, the United Kingdom or the European Union;
 - 11.1.13. the Goods contain no drugs, prohibited or stolen goods, contraband or other illegal material or substance or any cargo or item which is subject to any Restricted Trade Laws, unless all necessary licences, permits and consents have been obtained (copies of such licences, permits and consents to be provided to the Carrier on request); and
 - 11.1.14. The Merchant assumes responsibility for any period for which the Goods and Container may be outside Carrier's custody and control, including any gap between the Goods arriving at the port of discharge or delivery place and the period in which the Carrier agrees to perform OCM services under the OCM Contract.
- 11.2 The warranties set out in this Section 11 are cumulative and apply in addition to, and not in limitation of, each other and any other warranties, rights, defenses, or remedies available to the Carrier under these Terms, at law, or in equity.

12. MERCHANT'S OBLIGATIONS AND INDEMNIFICATION

General

- 12.1. The Merchant shall comply with all applicable laws, regulations or requirements of any Relevant Authority relating to the Goods, and the provisions of all licences, permits, consents and directions given by any Relevant Authority in respect of the Goods. Copies of such licences, permits, and consents shall be provided by the Merchant to the Carrier on request.
- 12.2. The Merchant shall arrange insurance for the Goods against all customary risks at all times during the Services and shall, on request, provide a copy of a certificate of insurance.
- 12.3. The Merchant indemnifies the Carrier, the Performing Parties or any member of the Carrier Group (and their respective employees, servants, agents, insurers or reinsurers) against any and all costs, expenses, claims, losses, liabilities, orders, awards, fines, proceedings and judgments of whatsoever nature incurred or suffered in connection with:
 - 12.3.1. a breach by the Merchant of any of its obligations and/or warranties under the Contract; and/or
 - 12.3.2. the Carrier becoming liable to any other party (including to any Relevant Authority) and/or incurring additional costs by reason of carrying Hazardous Goods; and/or
 - 12.3.3. the Carrier becoming liable to any other party (including to any Relevant Authority) and/or incurring additional costs by reason of the Carrier carrying out the Merchant's instructions or by Merchant's failure to provide instructions;
 - 12.3.4. the Carrier becoming liable to any third party and/or incurring additional costs by reason of the contamination of a third party's goods or facilities caused by the unloading of Goods from a Container; and/or
 - 12.3.5. the Carrier incurring liability in excess of its liability under the provisions of this Contract regardless of whether such liability arises from, or in connection with a breach of contract, negligence or breach of duty by the Carrier, its agents, servants or the Performing Parties.
- 12.4. The Merchant shall be responsible and agrees to reimburse the Carrier, plus a mark-up of ten percent (10%), for all duties, taxes, imposts, levies, deposits, fines and outlays of whatever nature levied by any Relevant Authority and/or any expenses incurred in complying with the requirement of any Relevant Authority in relation to the Goods or by reason of any illegal, incorrect or insufficient declaration, marking, numbering or addressing of the Goods.

Filling of Containers

- 12.5. The Carrier shall not be liable for, and the Merchant shall indemnify the Carrier against, loss and/or damage to Goods and/or any injury, loss, damage, liability or expense whatsoever incurred by the Carrier to the extent the same has been caused by any matter beyond its control including:
- 12.5.1. the way in which the Container was filled or unloaded;
 - 12.5.2. the unsuitability of the Goods for carriage in the Container;
 - 12.5.3. leakage from any valve or manlid not properly closed; or
 - 12.5.4. the Merchant's failure to comply with any of the provisions of Clause 2.

High Risk Areas

- 12.6. Where the Container is in a location known by the Parties to contain a heightened risk of hostilities ("High Risk Area") the Merchant shall be responsible for:
- 12.6.1. any loss or damage to the Containers in accordance with Clause 6.4; and
 - 12.6.2. Demurrage resulting from the failure at any time to take receipt, deliver, redeliver or otherwise place the Container(s) in an undamaged state and in good order and condition outside of a High Risk Area until the replacement cost value of the Container(s) is paid to Carrier pursuant to Clause 6.4.2.
- 12.7. The Merchant further agrees to waive, release, protect and hold the Carrier harmless in respect of any claim of whatsoever nature by whosoever for any loss or damage to the Goods or any consequence thereof while the Containers are in a High Risk Area.

13. CARRIER'S LIABILITY

- 13.1. The Carrier shall not be liable for:
- 13.1.1. any loss, damage or expense for delay, howsoever arising;
 - 13.1.2. any loss of profits, loss of sales, loss of business, loss of goodwill or reputation (in each case whether direct or indirect) or for any indirect or consequential loss;
 - 13.1.3. any loss or damage arising unintentionally from erroneous input into a computer system or from wrongful data transmission;
 - 13.1.4. any loss, damage or expense for any casualty occurring when the Goods are not in Carrier's custody or control, including during any gap between completion of the services under the Transport Document and the commencement of OCM services;
 - 13.1.5. any loss or damage to the Goods arising from ambient conditions, latent defects, breakdown, defrosting, stoppage of the refrigerating, heating, cooling, or any other specialized machinery, plant, insulation and/or apparatus of the Container or any other facilities, provided that the Carrier exercised reasonable due diligence before releasing the empty Container to Merchant;
 - 13.1.6. any loss or damage to a third party's goods or facilities caused by contamination with Goods unloaded from a Container;
 - 13.1.7. any loss or damage to the Goods, where heating or cooling is required, arising from over/under heating or cooling of the Goods, howsoever arising;
 - 13.1.8. any fine, penalty, loss, damage or expense to any other party (including to any Relevant Authority) for any casualty resulting from the carriage of Hazardous Goods;
 - 13.1.9. any loss, damage, or expense directly or indirectly related to Goods loaded into a Container prior to the Merchant receiving a Kosher Certificate, if required, from the Carrier;

- 13.1.10 any loss, damage, or expense relating to the actions or performance of any Performing Party appointed by the Merchant;
 - 13.1.11 any shortage, contamination, tampering, quality, condition, or otherwise, or any suspicions thereof, if high security seals were not used in accordance with Clause 2.1.10;
 - 13.1.12 any loss, damage, delay, or expense directly or indirectly related to the distribution of Arrival Notices to the Merchant or its Performing Parties, or any incorrect, inadequate, or incomplete information contained on an Arrival Notice; or
 - 13.1.13 any loss, damage, or expense directly or indirectly related to the performance of any Merchant Arranged Services, including damage or losses to Goods and Containers during the performance of such Merchant Arranged Services.
- 13.2. The defenses, limits and exclusions of liability provided for in the Contract shall apply in any action against the Carrier arising out in connection with the Contract (including loss or damage to Goods and delay) and whether the action be founded in contract, bailment, tort, breach of express or implied warranty or otherwise and even if the loss, damage or delay arose as a result of unseaworthiness, negligence, wilful misconduct or fundamental breach of contract.
- 13.3. In the event of loss or damage to the Goods, Carrier's liability to the Merchant shall be determined as follows:

Port to Port Carriage

- 13.4. For any claim for loss of or damage to the Goods arising during Port to Port Carriage the Carrier shall not be liable if such loss or damage arises prior to loading at the port of loading or subsequent to discharge at the port of discharge.
- 13.5. If and to the extent that any Compulsory Legislation provides for an additional period of responsibility, the Carrier shall during that period have the benefit of every right, defense, limitation and liberty provided by such Compulsory Legislation, and (to the extent permitted by such Compulsory Legislation) the rights, defenses, limitations and liberties provided by US COGSA notwithstanding that the loss or damage did not occur at sea.

Multimodal Transport

- 13.6. If any loss or damage occurs to the Goods during Multimodal Transport or during OCM services, then save where the provisions of Clause 13.8 apply and subject to any Compulsory Legislation, the Carrier shall not be liable for loss or damage caused by:
- 13.6.1. strike, lockout, stoppage or restraint of labor, the consequences of which the Carrier is unable to avoid by the exercise of diligence;
 - 13.6.2. any cause or event which the Carrier is unable to avoid, and the consequences of which the Carrier is unable to prevent by the exercise of reasonable diligence.
- 13.7. To the extent U.S. law applies, the Carrier shall by the Transport Document be entitled to all limitations and exemptions from liability as a matter of contract and as authorized by the provisions of title 46 of the United States Code from section 30501, and Sections 30521 through 30530, the same as if the Carrier were the owner of the vessel.

Liability During Waterborne Carriage

- 13.8. Should any loss of or damage occur during any element of the Services which involves Waterborne Carriage:
- 13.8.1. Where any Compulsory Legislation applies, the liability of the Carrier will be determined in accordance with such Compulsory Legislation;
 - 13.8.2. Where no Compulsory Legislation applies, the liability of the Carrier will be determined and limited in accordance with US COGSA;
 - 13.8.3. Where the place of loss or damage cannot be determined, the loss or damage shall be determined to have occurred aboard the first vessel that carried the Goods by sea.

Liability for 3rd Party Containers

- 13.9. The Carrier shall not be liable for any claim to the extent such claim arises from a Container not supplied by the Carrier (including loss and/or damage to Goods), and the Merchant shall indemnify the Carrier for any injury, loss, damage, liability, cost, security or expense whatsoever incurred by the Carrier as a result thereof.

Liability for Timings

- 13.10. The Carrier does not warrant that the Goods or any documents relating thereto shall be loaded on or by any particular date, time or vessel, or arrive at the port of discharge or delivery place at any particular time or in time to meet any particular market or use.

Liability for Shortage or Contamination

- 13.11. The Carrier shall not be liable for:
- 13.11.1 any shortage or contamination of Goods ascertained at discharge, if the Container is delivered by the Carrier with an original security seal intact unless directly resulting from insufficient cleaning.
 - 13.11.2 any costs related to the incineration or disposal of Goods as directed by the Merchant for any reason whatsoever where such Goods are determined by the Carrier to be eligible for a salvage sale, including but not limited to those costs for disposal or incineration, transportation, and storage/demurrage, until the empty Container is returned to the Carrier in accordance with Clause 6.
 - (i) The Carrier may assist in locating disposal or incineration facilities or salvage buyers for the Merchant's consideration.
 - (ii) The Merchant shall make the desired arrangements with the disposal or incineration facilities or salvage buyer directly at its own expense.
 - (iii) The Merchant is responsible for vetting, approving, and appointing a disposal or incineration facility or salvage buyer and ensuring the services or sale are conducted in accordance with applicable laws and regulations.
 - (iv) If the Merchant chooses to appoint a facility or buyer selected by the Carrier, it does so at its own will and risk. The Carrier assumes no liability or risk whatsoever when providing contacts for disposal or incineration services or salvage buyers.

Liability for Particulars of Goods

- 13.12. The Carrier makes no representation of and shall not be liable for the description, condition, quality, quantity or value of the Goods or the marks, number, quantity, weight or any statement as to the contents of Containers and the Carrier shall be under no responsibility whatsoever in respect of such description or particulars. The Carrier does not undertake to check the thermal expansion coefficient or temperature of the Goods.

Limit of Liability

- 13.13. In addition to the above, the Carrier shall be entitled to rely upon any rights, defences, exceptions, limitations or liberties provided elsewhere in the Contract or of any statutory right, defence, or limitation of liability provided by any applicable law, statute or regulation of any country.

14. CALCULATION OF COMPENSATION

Loss or Damage to Goods

- 14.1. The Carrier's liability for any loss or damage to the Goods shall be limited to the lesser of:
- 14.1.1. the value of the Goods at the port or place of loading at the time of shipment; and
 - 14.1.2. if any Compulsory Legislation applies, the amount set out in such Compulsory Legislation; or
 - 14.1.3. if no Compulsory Legislation applies, the amount set out in US COGSA.

General Claims

- 14.2. The Carrier's maximum aggregate liability for any claim under the Contract (other than for loss of or damage to the Goods) shall be limited to an amount equal to the freight payable to the Carrier under the Contract.

15. CARRIER'S SUBCONTRACTORS' LIABILITY

- 15.1. The Carrier may sub-contract on any terms whatsoever the whole or any part of the Services.
- 15.2. If the Carrier elects to sub-contract performance of any or all of the Services, the Merchant shall indemnify the Carrier and/or any Performing Party or any director, officer, employee, servant or agent of the Carrier in full and against all consequences of any claim or allegation whether arising in contract, bailment, tort (including negligence) or otherwise which imposes or attempts to impose upon any of them, or any vessel owned, operated or chartered by any of them, any liability whatsoever in connection with the Goods and/or the Services.
- 15.3. The Merchant undertakes to make no claim or allegation against any Performing Party (including any director, officer, employee, servant or agent of the Carrier), which attempts to impose upon any of them or their property any liability in connection with the Goods. The Merchant indemnifies the Carrier against all consequences of any such claim or allegation. Every such Performing Party (including any subcontractor) shall have the benefit of all provisions of these Terms of whatsoever nature benefiting the Carrier including the aforementioned undertaking and Law and Jurisdiction Clause. In entering into the Contract, the Carrier, to the extent of such provisions, does so not only on its own behalf but also as agent and trustee for each of its directors, officers, employees, servants or agents, and each Performing Party, all of whom shall to that extent be deemed parties to the Contract.

16. MATTERS AFFECTING PERFORMANCE OF CONTRACT (FORCE MAJEURE)

- 16.1. If the Services are or are likely to be affected by any hindrance, risk, delay, danger, difficulty or disadvantage of whatever kind (including, without limitation, any of the Merchant or Performing Parties becoming insolvent or any action undertaken or threatened by a third party) which is beyond the reasonable control of the Carrier, and whether or not existing at the time when the Contract was made or the Goods were received for carriage (a "Force Majeure event"), the Carrier may, without notice to the Merchant:
- 16.1.1. treat the performance of the Services as terminated and place the Goods at the disposal and responsibility of the Merchant at any place or port; or
- 16.1.2. affirm the Contract and complete the Services.
- 16.2. In addition to any amounts due under the Contract (including Demurrage), the Carrier shall be entitled to additional freight, compensation for any additional costs and/or the replacement cost of any Container (calculated in accordance with Clause 6.4.2) which contains Goods in respect of which the Carrier has exercised its rights under Clause 16.1.
- 16.3. In no event shall Carrier have any liability for loss or damage to the Goods resulting in whole or in part from a Force Majeure event.

17. FREIGHT AND DEMURRAGE

- 17.1. Unless otherwise expressly stated in the Contract, full freight to destination and charges due under the Contract, whether or not prepaid, shall be deemed earned and due upon the earlier of:
- 17.1.1. receipt of the Container by the Merchant;
- 17.1.2. receipt of Goods by the Carrier; or
- 17.1.3. commencement of OCM.
- 17.2. The Carrier shall retain any freight prepaid, and/or claim any freight due, should the Goods be delivered to destination or not.

- 17.3. All freight, Demurrage, charges or other amounts due to the Carrier shall be paid by the Merchant on demand directly to the Carrier without any offset, pending claim, counterclaim or deduction in U.S. Dollars unless otherwise agreed, including Demurrage and/or storage charges resulting from:
- (i) changes in vessel schedules and availability;
 - (ii) timing of vessel departures and arrivals;
 - (iii) Rolled bookings: and/or
 - (v) bottleneck of imported/exported Containers/Goods at any port of loading, transshipment, or discharge or any pre-carriage and/or on-carriage locations.
- 17.4. The Merchant shall indemnify the Carrier for any and all costs and expenses (including legal and enforcement action) incurred as a result of the Merchant's breach of the Contract.
- 17.5. Preconditions to Carriage. The Carrier may refuse to accept, continue, or tender the Container for carriage, and may withhold release of any Transport Document or Container, until all amounts then due are paid in full or satisfactory security is provided and all other reasonable preconditions to carriage (including required instructions, documents, permits and customs clearances) are met; any such refusal will not constitute a breach by the Carrier and will not stop time running under the Abandonment Triggers set forth in Section 5.5.1.

18. CARRIER'S LIENS

- 18.1. The Carrier shall have a general lien on the Goods or other product belonging to the Merchant (including any documents relating thereto), funds held, monies due to the Merchant by a third party, and any other goods in respect of which the Carrier is providing services to the Merchant ("Other Goods") for:
- 18.1.1. all amounts due from the Merchant under the Contract to Carrier, or to any member of the Carrier group under any other contract;
 - 18.1.2. any other amounts due to the Carrier from any person coming within the definition of Merchant, whether or not related to the Services;
 - 18.1.3. any and all other fees, costs and expenses due to the Carrier or the Carrier Group, including (but not limited to):
 - (i) Demurrage;
 - (ii) Deadfreight;
 - (iii) Fines;
 - (iv) Dues;
 - (v) Liens;
 - (vi) Surveys;
 - (vii) Lightering;
 - (viii) Custom duties and port charges;
 - (ix) Legal fees and other expenses incurred in connection with the attachment, seizure, detention, condemnation or other legal proceeding brought against the Goods by any Relevant Authority or third parties; and
 - (x) General average contributions to whomsoever due.
- 18.2. The Carrier may exercise any lien at any time, with or without notice, and whether the Services are completed or not. Such lien(s) shall survive delivery of the Goods and shall extend to selling the Goods to cover the costs of recovering any and all sums due from the Merchant (including legal fees).

19. TIME BAR

- 19.1. Unless notice in writing is given to the Carrier or its agent at the place and time of delivery, or within three (3) calendar days thereafter if the damage is not apparent following a reasonable inspection, the Goods shall be deemed to have been delivered undamaged and in full and the Carrier shall have no liability whatsoever.
- 19.2. In any event, all liability whatsoever of the Carrier arising out of or in connection with the Contract shall cease unless formal proceedings are issued in accordance with Clause 23 and written notice thereof is given to the Carrier within twelve (12) months after the delivery of the Goods or the date when the Goods should have been delivered.

GENERAL PROVISIONS

20. GENERAL AVERAGE

- 20.1. All Goods whether carried on or under deck shall participate in General Average.
- 20.2. The Carrier may declare General Average which shall be adjusted at any place at the option of the Carrier or the Performing Parties, in respect of all Goods, whether carried on or under deck. The New Jason Clause as published by BIMCO current as of the date of the Contract is incorporated herein.
- 20.3. Notwithstanding Clause 20.1 above, the Merchant shall indemnify the Carrier in respect of any amounts (and any expense arising therefrom) the Carrier is found to be due to contribute in General Average and shall provide such security as may be required by the Carrier or the Performing Parties or the appointed average adjuster, to cover the estimated contribution of the Goods in general average including any salvage and special or particular charges thereon. Such security shall, if required, be provided by the Merchant to the appointed average adjuster prior to delivery of the Goods.
- 20.4. The Carrier shall be under no obligation to take any steps whatsoever to collect security for General Average contributions due to the Merchant.

21. BOTH-TO-BLAME COLLISION

If a vessel on which the Goods are being carried collides with another ship as the result of (i) the negligence of that other ship, and (ii) any act, neglect or default of the master, mariner, pilot of the vessel (or other servant of the owner or operator of the vessel) in the navigation or management of the vessel, and the Merchant recovers payment for loss of or damage to the Goods from the other ship, and the other ship obtains from the Carrier (or the Performing Parties) a contribution towards the payment it made to the Merchant, then the Merchant will reimburse the Carrier in respect of that contribution and shall indemnify the Carrier for any other loss, liability or expenses incurred by the Carrier (or the Performing Party) to the other ship whatsoever arising out of the other ship's claim for contribution.

22. CYBER SECURITY

- 22.1. Notwithstanding anything to the contrary in the Contract, the Carrier (including the Carrier Group) will, to the maximum extent permitted by law, have no liability for any losses, damages, expenses, costs, fines or claims suffered, received or incurred by Merchant (or any of Merchant's group companies or affiliates), arising directly or indirectly from:
 - 22.1.1. any virus, malware and other malicious, disabling or damaging code, device or script, and any form of unwanted, disruptive or illegal intrusion or access to Merchant's systems, tools, platforms, networks and applications (together "Merchant's Systems") (including by way of a cyber-attack) as a result of any access, interface with, or entry of data, information or content into Merchant's Systems by or on behalf of the Carrier; or
 - 22.1.2. any errors in data, information or content entered into Merchant's Systems by or on behalf of the Carrier; or
 - 22.1.3. a breach of security including a breach which leads to the destruction, loss, corruption, alteration, unauthorized disclosure of, or access to (including by way of a cyber-attack), any of the Merchant's

information or data held or otherwise processed by or on behalf of the Carrier, and the Merchant undertakes to ensure that the Merchant's Systems and the Carrier's system, tools, platforms, networks and applications are protected against any virus, malware and other malicious, disabling or damaging code, device or script, and any form of unwanted, disruptive or illegal intrusion or access to the Merchant's Systems and the Carrier's system, tools, platforms, networks and applications (including by way of cyber-attack).

23. LAW AND JURISDICTION

- 23.1. Subject to Clauses 23.3 and 23.4, the Contract and any non-contractual obligation arising out of or in connection with it shall be subject to English law, and any disputes arising out of or in connection with it shall be referred to the exclusive jurisdiction of the High Court of Justice in London.
- 23.2. A Party served with a written request by the other Party shall appoint solicitors in London, England, for the purposes of accepting service of documents under the procedural rules of the High Court of Justice and advise the requesting Party in writing of their contact details.
- 23.3. For US Carriage, the Contract shall be subject to US law and any dispute arising out of or in connection with it shall (subject to Clause 23.4) be subject to the exclusive jurisdiction of the United States District Court for the Southern District of New York.
- 23.4. For any claim by the Carrier arising out of or in connection with the Contract, the Carrier may at its sole option commence proceedings in the courts of any competent jurisdiction.

24. DATA PROTECTION

- 24.1. The parties acknowledge and agree that each of them will comply with their respective obligations as data controllers under the EU General Data Protection Regulation 2016/679/EU ("GDPR"), and any applicable local laws supplementing or implementing the GDPR.
- 24.2. The parties also agree that if any personal data (as defined in the GDPR) in connection to this Contract will be transferred outside of the European Economic Area, the parties will ensure that the GDPR requirements on third party transfers are met, including by entering into the European Commission's approved standard contractual clauses, if applicable.

25. CONFIDENTIALITY

Without the prior consent of the Carrier, the Merchant shall not disclose any financial terms of the Contract to any person or entity not controlling, controlled by or under common control of them, except for disclosure of information which must be disclosed by operation of law. For the avoidance of doubt, the Merchant shall not be entitled to receive any financial terms directly attributed to the services provided by Performing Parties hereunder. Such information may not be disclosed due to corresponding obligations of confidentiality.

26. SEVERABILITY

The terms of the Contract shall be separable, and if any provisions thereof or any part of any provision is held to be invalid or unenforceable, such holding shall not affect the validity or enforceability of any other provision or part thereof.

27. THIRD PARTY RIGHTS

Except for the ability of other members of the Carrier Group to be able to enforce any of the Carriers' rights under these Terms, none of these Terms shall be enforceable by anyone that is not a party to the Contract.

28. ENTIRE AGREEMENT

The Merchant agrees that it has not relied upon any pre-contractual statement made by the Carrier in entering into the Contract. Pre-contractual statement means any undertaking, promise, assurance, statement, representation, warranty or undertaking (whether in writing or not) of any person relating to the Services.

29. WAIVER

No failure by the Carrier to enforce any rights under the Contract shall be considered to be a waiver of any form. A waiver will only be effective if in writing and will not constitute a waiver of any other breach or default, nor shall it affect the other terms of this Contract. A waiver of a breach of any of the terms of the Contract or of a default under this Contract will not prevent either Party from later requiring compliance with the waived obligation. The rights and remedies provided in these Terms are cumulative and (subject to the other provisions of these Terms) are not exclusive of any rights or remedies provided by law.