

# HONG KONG EXPRESS AIRWAYS LIMITED (“HKE”) GENERAL TERMS AND CONDITIONS OF CARRIAGE FOR CARGO

## Shipper’s Acceptance of the General Terms

Shipper shall comply with all terms set forth herein and in the Agreement (as defined hereinbelow) to which these terms are attached or are incorporated by reference (each as amended or supplemented, and together with any specifications and other documents referred to herein or on the Agreement. (“Offer”)

This Offer is an offer to purchase the Service (as defined hereinbelow). The Agreement shall not constitute an acceptance of any offer to sell, quotation or other proposal from Shipper, even if referred to in this Offer.

ACCEPTANCE OF THIS OFFER IS EXPRESSLY LIMITED TO THE TERMS OF THESE GENERAL TERMS. HKE OBJECTS TO ANY TERMS AND CONDITIONS INCLUDED WITH SHIPPER’S QUOTATION, INVOICE OR OTHER DOCUMENT WHICH ARE ADDITIONAL TO OR DIFFERENT THAN THE TERMS OF THE OFFER AND NONE OF SUCH ADDITIONAL OR DIFFERENT TERMS SHALL BE PART OF THE CONTRACT BETWEEN SHIPPER AND HKE, UNLESS BOTH PARTIES EXPRESSLY AGREED IN A SEPARATE AGREEMENT THAT SUCH TERMS SHOULD OVERRIDE THESE GENERAL TERMS IN THE EVENT OF A CONFLICT.

NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, CLAUSES REGARDING ACCEPTABILITY OF GOODS FOR CARRIAGE (ARTICLE 2), SHIPMENTS IN THE COURSE OF CARRIAGE (ARTICLE 5), SHIPPER’S INDEMNITY (ARTICLE 6.3), CARRIER’S LIABILITY (ARTICLE 11) IN THESE GENERAL TERMS ALWAYS TAKE PRECEDENCE OVER ANY ALTERNATIVE OR CONFLICTING TERMS IN ANY OTHER DOCUMENT CONNECTED WITH THE OFFER.

## 1 Definitions and interpretation

### 1.1 Definitions

In these General Terms:

“Agent” means, except when the context otherwise requires, any person who has authority, express or implied, to act for or on behalf of the Carrier in relation to the carriage of cargo.

“Air Waybill”, which is equivalent to the term “air consignment note”, means the document entitled “Air Waybill/Consignment Note” made out by or on behalf of the Shipper which evidences the contract between the Shipper and the Carrier for carriage of cargo.

“Applicable Convention” means whichever of the following instruments are applicable: (a) the Convention for the Unification of Certain Rules Relating to International Carriage by Air, signed at Warsaw, 12 October 1929; or (b) the Warsaw Convention as amended at The Hague on 28 September 1955; or (c) the Warsaw Convention as amended by Additional Protocol No. 1 of Montreal (1975); or (d) the Warsaw Convention as amended at The Hague and by Additional Protocol No.2 of Montreal (1975); or (e) the Warsaw Convention as amended at The Hague and by Additional Protocol No. 4 of Montreal (1975); or (f) Guadalajara Supplementary Convention (1961) (Guadalajara); or (g) The Convention on the Contract for the International Carriage of Goods by Road (CMR Convention) signed at Geneva on 19th May 1956; or (h) The Convention for the Unification of Certain Rules for International Carriage by Air, signed at Montreal, 28 May 1999.

“Cargo”, which is equivalent to the term “goods”, means anything carried or to be carried in an aircraft except mail, or baggage carried under a passenger ticket and baggage check, but includes baggage moving under an Air Waybill.

“Carriage”, which is equivalent to the term “transportation”, means carriage of cargo by air or by another means of transport, whether gratuitously or for reward.

“Carrier” includes the air carrier issuing the Air Waybill and all carriers including non-air carriers that carry or undertake to carry the cargo or to perform any other services related to such carriage.

“Charges Collect” means the charges entered on the Air Waybill for collection from the Consignee against delivery of the shipment.

“Conditions” means these conditions of carriage for cargo.

“Consignee” means the person whose name appears on the Air Waybill as the party to whom the shipment is to be delivered by the Carrier.

“Days” means full calendar days, including Sundays and legal holidays; provided that for purposes of notification the balance of the day upon which notice is despatched shall not be counted.

“Delivery Service” means the surface carriage of inbound shipments from the airport of destination to the address of the Consignee or that of the Consignee’s designated agent or to the custody of the appropriate government agency when required, including any incidental surface carriage between airports.

“Pick-up Service” means the surface carriage of outbound shipments from the point of pickup at the address of the Shipper or that of the Shipper’s designated agent to the airport of departure, including any incidental surface carriage between airports.

“Shipment”, which is equivalent to the term “consignment” means, except as otherwise provided herein, one or more packages, pieces or bundles of cargo accepted by the Carrier from one Shipper at one time and at one address, receipted for in one lot and under a single Air Waybill, for carriage to one Consignee at one destination address.

“Shipment Record”, means any record of carriage preserved by the Carrier, evidenced by means other than an Air Waybill.

“Shipper”, which is equivalent to the term “Consignor”, means the person whose name appears on the Air Waybill, as the party contracting with the Carrier for the carriage of cargo.

“Special Drawing Rights” means units of account used by the International Monetary Fund and known as Special Drawing Rights.

“Trade Controls” means measures to address concerns about national security, foreign policy, international legal obligations, or concerns about human rights, internal repression, or terrorism. Specifically:

economic and trade sanctions prohibit or restrict dealings with targeted countries, organizations, entities and/or individuals; and

import/export controls regulate the transfer of particular goods, technology and software, depending on the nature, destination, ultimate end-use and/or end-user of the products or services.

### 1.2 Applicability

#### 1.2.1 General

These Conditions shall apply to all carriage of cargo, including all services incidental thereto, performed by or on behalf of the Carrier; provided however that if such carriage is “international carriage” as defined in the Applicable Convention, such carriage shall be subject to the provisions of the Applicable Convention and to these Conditions to the extent that these Conditions are not inconsistent with the provisions of such Convention.

#### 1.2.2 Applicable Laws and Carrier’s Tariffs

To the extent not in conflict with Article 1.2.1 all carriage and other services performed by the Carrier are subject to:

- (a) applicable laws (including national laws implementing a convention or extending the rules of the applicable convention to carriage which is not “International Carriage” as defined in the applicable convention), Trade Controls, government regulations, orders and requirements;
- (b) these conditions and other applicable tariffs, rules, regulations and timetables (but not the times of departure and arrival therein specified) of the Carrier which may be inspected at any of its offices and at airports from which it operates regular services;
- (c) the Shipper, owner and Consignee must comply with applicable Trade Controls and that the Shipper, owner and Consignee will take the necessary steps to ensure that their respective operations and practices align with the Carrier’s policies and procedures.

#### 1.2.3 Application to United States and Canada

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These Conditions do not apply to carriage between places in the United States or in Canada or between a place in the United States or in Canada and any place outside thereof to which tariffs in force in those countries apply. The tariffs applicable to such carriage are available for inspection at the offices of the Carrier.

### 1.2.4 Gratuitous Carriage

With respect to gratuitous carriage, the Carrier reserves the right to exclude the application of all or any part of these Conditions.

### 1.2.5 Charters

With respect to carriage of cargo performed pursuant to a charter agreement with the Carrier, such carriage shall be subject to the Carrier's charter tariffs applicable thereto (if any) and these Conditions shall not apply except to the extent provided in said charter tariff. Where the Carrier has no charter tariff applicable to such charter agreement, these Conditions shall apply to such agreement except that the Carrier reserves the right to exclude the application of all or any part of these Conditions and, in case of divergence between the applicable provisions of these Conditions and the conditions contained or referred to in the charter agreement, the latter shall prevail and the Shipper, by carriage pursuant to a charter agreement, whether or not concluded with the Shipper, agrees to be bound by applicable terms thereof.

### 1.2.6 Change Without Notice

These Conditions and the published rates and charges are subject to change without notice except to the extent otherwise provided by applicable law or government regulations or order; provided however that no such change shall apply to a contract of carriage after the date of conclusion of the contract of carriage or after the date the rate or charge for the carriage has been entered in the Shipment Record.

### 1.2.7 Effective Rules

All carriage of cargo governed by these Conditions shall be subject to the Carrier's rules, regulations and tariffs in effect on the date of issuance of the Air Waybill by the Carrier, provided that in the event of inconsistency between these Conditions and the Carrier's rules, regulations and tariffs, these Conditions shall prevail. Under no circumstances will the Carrier accept any increased obligations or liability that arise by virtue of Shippers or agents issuing Air Waybills or Shipment Records for carriage of shipments on the Carrier's flights which purport to waive or restrict the Carrier's entitlement to rely upon these Conditions, regulations and tariffs; and **the Shipper agrees to indemnify and hold harmless the Carrier in respect of any increased liability, losses, damages, costs or expenses that arise from issuing such Air Waybills or Shipment Records.**

## 2 Acceptability of Goods for Carriage

### 2.1 Cargo Acceptance

The Carrier undertakes to transport, subject to the availability of suitable equipment and capacity, all shipments, unless otherwise excluded by the Carrier's regulations and provided:

- 2.1.1 the transportation, or the exportation or importation thereof is not prohibited by the laws or regulations of any country to be flown from, to or over;
- 2.1.2 they are packed, labelled and described in a manner ready for carriage as required by the issuing Carrier and any subsequent Carrier;
- 2.1.3 they are accompanied by the requisite shipping documents;
- 2.1.4 they are not likely to endanger aircraft, persons or property, or cause annoyance to passengers;
- 2.1.5 to the extent permitted by law the Carrier reserves the right without assuming any liability to refuse carriage of cargo when circumstances so require.

### 2.2 Valuation Limit of Shipment

The Carrier may refuse carriage of shipments having a declared value for carriage in excess of the amount specified in the Carrier's regulations.

### 2.3 Packing and Marking of Cargo

- 2.3.1 The Shipper is responsible for ensuring that the cargo is packed in an appropriate way for air carriage so as to ensure that:
  - (a) it can be carried safely with ordinary care in handling;
  - (b) it can be protected from all weather conditions to which it may be exposed, including but not limited to rain, wind, heat and cold;
  - (c) it does not injure or damage any persons, animals,

goods or property. Each package shall be legibly and durably marked so as to identify the Shipper and Consignee.

- 2.3.2 Packages containing valuables as defined in the Carrier's regulations must be sealed if so requested by the Carrier.

- 2.3.3 The Carrier is under no obligation to note or be aware of any information contained on the house air waybills used in respect of consolidated or pre-packed shipments.

- 2.3.4 The Carrier reserves the right to refuse the transportation of cargo that it considers is not suitably packed or marked.

### 2.4 Special Cargo

Special cargo, including but not limited to valuables, dangerous goods, live animals, perishables, fragile goods, human remains, is acceptable only under the conditions set forth in the Carrier's regulations applicable to the carriage of such cargo. Such cargo must be packed and documented strictly in accordance with the Carrier's special handling procedures which are incorporated and form part of these Conditions. In the event of deterioration of such shipments for whatever reason, the Carrier in its sole discretion may take such steps as it deems appropriate.

### 2.5 Dangerous Goods

The Shipper shall not tender for carriage any volatile or explosive cargo or cargo which is or may become dangerous, inflammable or offensive or which is or may become liable to damage any property whatsoever without presenting a full description disclosing the nature of the cargo, and in any event the Shipper shall be liable for any loss and damage caused thereby. If in the sole opinion of the Carrier the cargo becomes or is liable to become dangerous, inflammable, explosive, volatile, offensive or damaging in nature, the same may at any time be retained, destroyed, disposed of or abandoned or rendered harmless by the Carrier without compensation to the Shipper and without prejudice to the Carrier's right to any charges hereunder and at the sole cost of the Shipper.

### 2.6 Responsibility for Non-Observance of Conditions, Laws and Regulations

The Shipper warrants that it has complied with all the laws, regulations and conditions relating to the nature, packaging, labelling, storage or carriage of cargo and that the cargo is packed in a manner adequate to withstand the ordinary risks of carriage having regard to its nature, and further the Shipper hereby indemnifies the Carrier for any liability whatsoever and costs, fees and expenses as a result of or arising out of the Shipper's failure to comply with each of these warranties, including but not limited to compliance with the applicable dangerous goods regulations.

### 2.7 Carrier's Right of Inspection

The Carrier reserves the right to examine the packaging and contents of all shipments and to enquire into the correctness or sufficiency of information or documents tendered in respect of any shipment, but the Carrier shall be under no obligation to do so and under no circumstances will the Carrier be liable for any direct or indirect losses resulting from its examination of the packaging and shipments.

### 2.8 Unit Load Devices

When the Shipper undertakes to load a Unit Load Device (ULD) the Shipper must comply with the Carrier's loading instructions and shall be liable for and indemnify the Carrier against all consequences of any non-compliance with such instructions.

### 2.9 Pre-packed and Mixed Pre-packed Shipments

The Shipper warrants that it will provide the Carrier with such contemporaneous information that it reasonably requires at the time of booking and acceptance of the number of pieces and weight of packages that have been pre-packed. The Shipper accepts that the Carrier will not have had the opportunity to examine the contents of any pre-packed shipment and hereby indemnifies the Carrier for any liability whatsoever and costs, fees and expenses as a result of or arising out of the Shipper's failure to comply with this warranty.

## 3 Documentation

### 3.1 Air Waybill

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The Shipper shall make out or have made out on its behalf, an Air Waybill in the form, manner and number of copies prescribed by the Carrier, and shall deliver such Air Waybill to the Carrier simultaneously with the acceptance of cargo by the Carrier for carriage. However, charges for carriage and other charges, insofar as they have been ascertained, shall be inserted in the Air Waybill by the Carrier. The Carrier may require the Shipper to make out, or have made out on its behalf, separate Air Waybills when there is more than one package.

### 3.2 Shipment Record

The Carrier, with the express or implied consent of the Shipper, if required by the applicable convention, may substitute for the delivery of an Air Waybill a Shipment Record to preserve a record of the carriage to be performed. If such Shipment Record is used the Carrier shall, if so requested by the Shipper, deliver to the Shipper in accordance with the Carrier's regulations a receipt for the cargo permitting identification of the shipment and access, in accordance with the Carrier's regulations.

### 3.3 Apparent Condition/Packing of the Cargo

If the apparent order and condition of the cargo and/ or packing is in any way defective the Shipper shall, if an Air Waybill is delivered, include on the Air Waybill a statement of such apparent order and condition. If no Air Waybill is delivered the Shipper shall advise the Carrier of the apparent order and condition of the cargo, to enable the Carrier to insert an appropriate reference thereto in the Shipment Record. However, if the Shipper fails to include such statement in the Air Waybill or to advise the Carrier of the apparent order and condition of the cargo, or if such statement or advice is incorrect, the Carrier may include in the Air Waybill or insert in the Shipment Record a statement of the apparent order and condition of the cargo, or note a correction thereto.

### 3.4 Preparation, Completion or Correction by the Carrier

The Carrier may at the request of the Shipper expressed or implied, make out the Air Waybill in which event, subject to proof to the contrary, the Carrier shall be deemed to have done so on behalf of the Shipper. If the Air Waybill handed over with the cargo or if the particulars and statements relating to the cargo furnished by or on behalf of the Shipper to the Carrier for insertion in the Shipment Record do not contain all the required particulars, or if the Air Waybill or such particulars or statements contain any error, the Carrier is authorised to complete or correct the Air Waybill or particulars or statements to the best of the Carrier's ability without being under any obligation to do so

### 3.5 Responsibility for Particulars

The Shipper is responsible for the correctness of the particulars and statements relating to the cargo inserted by the Shipper or on the Shipper's behalf in the Air Waybill or furnished by the Shipper or on the Shipper's behalf to the Carrier for insertion in the Shipment Record. Where such information is provided by means of Electronic Data Interchange (EDI), it is the responsibility of the Shipper or the Shipper's agent to verify contents, accuracy and completeness of the EDI messages and subsequent messages according to the agreed standards and specifications. The Shipper's particulars as to value, unless no value is declared with a supplemental charge having been paid, shall be conclusive evidence, as against the Shipper and Consignee of the value of the shipment. Where no value is declared the Shipper warrants that the Shipper requires no special security or handling. The Shipper shall indemnify the Carrier against all damages suffered by the Shipper, or by any other person to whom the Carrier is liable, by reason of the irregularity, incorrectness, or incompleteness of the particulars and statements furnished by the Shipper or on the Shipper's behalf.

### 3.6 Alterations

Air Waybills, the writing on which has been altered or erased, need not be accepted by the Carrier.

## 4 Rates and Charges

### 4.1 Applicable Rates and Charges

Rates and charges for carriage governed by these Conditions are those duly published by the Carrier and in effect on the date the contract of carriage has been concluded.

### 4.2 Airport to Airport

Except as otherwise provided in the Carrier's regulations, rates and charges apply only from airport to airport.

### 4.3 Basis of Rates and Charges

Rates and charges will be based on the units of measurement and subject to the rules and conditions published in the Carrier's regulations and rate tariffs.

### 4.4 Services not included in Published Rates and Charges

Published rates and charges cover the carriage of shipments between airports or other landing places at or near the points shown in the published rates and charges. Except as otherwise specifically provided in the Carrier's regulations, such published rates and charges do not include any ancillary service given by the Carrier in connection with the air carriage.

### 4.5 Insurance

The Carrier does not offer all risk insurance on cargo shipments. The Carrier recommends that the Shipper obtains such insurance.

### 4.6 Payment of Charges

4.6.1 Rates and charges are published in the currency shown in the applicable rate tariffs, and may be paid in any currency acceptable to the Carrier. When payment is made in a currency other than in the currency in which the rate or charge is published, such payment will be made at the rate of exchange established for such purpose by the Carrier, the current statement of which is available for inspection upon first request at the Carrier's office where payment is made. The provisions of this paragraph are subject to applicable exchange laws and government regulations.

4.6.2 Full applicable charges, whether prepaid or collect, fees, duties, taxes, charges, advances and payments, made or incurred or to be incurred by the Carrier and any other sums payable to the Carrier, will be deemed fully earned, whether or not the cargo is lost or damaged, or fails to arrive at the destination specified in the contract of carriage. All such charges, sums and advances will be due and payable upon receipt of the cargo by the Carrier, except that they may be collected by the Carrier at any stage of the service performed under the contract of carriage and may be collected at any time upon demand of the Carrier.

4.6.3 The Shipper guarantees payment of the freight rate, storage charges and all other unpaid charges, unpaid charges collect, advances and disbursements of the Carrier. The Shipper also guarantees payment of all costs, expenditures, fines, penalties, loss of time, damage and other sums which the Carrier may incur or suffer by reason of the inclusion in the shipment of articles the carriage of which is prohibited by law, or the illegal, incorrect or insufficient marking, numbering, addressing or packing of packages or descriptions of the cargo, or the absence, delay or incorrectness of any export or import licence or any required certificate or document, or any improper customs valuation, or incorrect statement of weight or volume.

The Carrier shall have a lien on the cargo for each of the foregoing and, in the event of non-payment thereof, shall have the right to dispose of the cargo at public or private sale (provided that prior to such sale the Carrier shall have mailed notified thereof to the Shipper or to the Consignee at the address stated in the Air Waybill) and to pay itself out of the proceeds of such sale any and all such amounts.

No such sale shall, however, discharge any liability to pay any deficiencies, for which the Shipper and the Consignee shall remain jointly and severally liable. By taking delivery or exercising any other right arising from the contract of carriage, the Consignee agrees to pay such charges, sums and advances, except prepaid charges.

4.6.4 If the gross weight, measurement, quantity or declared value of the cargo exceeds the gross weight, measurement, quantity or declared value on which charges for carriage have been previously computed, the Carrier shall be entitled to require payment of the charge on such excess.

4.6.5 Charges collect shipments will be accepted only to countries listed in the Carrier's regulations and subject to the conditions contained therein. In any event the Carrier reserves the right to refuse shipments on a charges collect basis to any country

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where regulations prevent the conversion of funds into other currencies or the transfer of funds to other countries. Information on countries to which charges collect service is available may be obtained from offices and representatives of the Carrier.

- 4.6.6 All charges applicable to a shipment are payable in cash at the time of acceptance thereof by the Carrier in the case of a prepaid shipment, i.e. a shipment on which the charges are to be paid by the Shipper, or at the time of delivery thereof by the Carrier in the case of a collect shipment, i.e. a shipment on which the charges are to be paid by the Consignee. If the Consignee fails to pay said charges, when such charges are to be collected, the Shipper remains obligated to pay these charges and interest at the judgment rate in the applicable jurisdiction.
- 4.6.7 The Carrier may cancel the carriage of the shipment upon refusal by the Shipper, after demand by the Carrier, to pay the charges or portion thereof so demanded, without the Carrier being subject to any liability therefore.

### 5 SHIPMENTS IN COURSE OF CARRIAGE

#### 5.1 Compliance with Government Requirements

- 5.1.1 The Shipper shall comply with all applicable laws, customs and other government regulations of any country to, from, through or over which the cargo may be carried, including those relating to the packing, carriage or delivery of the cargo, and shall, together with the shipment, furnish such information and deliver such documents as may be necessary to comply with such laws and regulations. The Carrier shall not be obliged to inquire into the correctness or sufficiency of such information or documents. The Carrier shall not be liable to the Shipper or any other person for loss or expense due to the Shipper's failure to comply with this provision. The Shipper shall be liable to the Carrier for any damage occasioned by the failure of the Shipper to comply with this provision.
- 5.1.2 The Carrier shall not be liable for refusing to carry any shipment if the Carrier reasonably determines in good faith that such refusal is required by any applicable law, government regulation, demand, order or requirement.

#### 5.2 Disbursement and Customs Formalities

The Carrier is authorised (but shall be under no obligation) to advance any duties, taxes or charges and to make any disbursement with respect to the cargo and the Shipper and by taking delivery or exercising any other right arising out of the contract of carriage the Consignee shall be jointly and severally liable for the reimbursement thereof.

No Carrier shall be under obligation to incur any expense or make any advance in connection with the forwarding or re-forwarding of the cargo except against prepayment by the Shipper. If it is necessary to make customs entry of the cargo at any stopping place, and no customs clearance agent has been named on the face of the Air Waybill or in the Shipment Record, the cargo shall be deemed to be consigned to the Carrier carrying the cargo to such place.

For any such purpose a copy of the Air Waybill, or of the Shipment Record, certified by the Carrier, shall be deemed an original.

#### 5.3 Schedules, Routings and Cancellations

- 5.3.1 Unless specifically agreed otherwise and so indicated in the Air Waybill or Shipment Record, the Carrier undertakes to carry the cargo with reasonable despatch but assumes no obligation to carry the cargo by any specified aircraft or over any particular route or routes, or to make connections at any point according to any particular schedule. Times shown in the Carrier's timetables or elsewhere are approximate and not guaranteed and form no part of the contract of carriage. No time is fixed for commencement or completion of carriage or delivery of cargo. The Carrier is hereby authorised to select or deviate from the route or routes of the shipment, notwithstanding that the same may be stated on the face of the Air Waybill or in the Shipment Record. The Carrier is not

responsible for errors or omissions either in timetables or other representations of schedules. No employee, agent or representative of the Carrier is authorised to bind the Carrier by any statements or representations of the dates or times of departure or arrival, or of operation of any flight.

- 5.3.2 The Carrier is authorized to carry the consignment without notice wholly or partly by any means of surface transportation, or to arrange such carriage.
- 5.3.3 If it considers that it would be advisable to do so because of any fact beyond its control (including but without limitation, meteorological conditions, acts of God, force majeure, strikes, riots, civil commotion, embargoes, wars, hostilities, disturbances or unsettled international or domestic conditions) actual, threatened or reported or because of any delay, demand, condition, circumstance or requirement due, directly or indirectly, to such fact or not reasonably to be foreseen, anticipated, or predicted at the same time the cargo was accepted; or if it reasonably considers that any other circumstances so require, taking into account the interests of the Shipper, the Carrier reserves the right without notice, to cancel, terminate, divert, postpone, delay or advance any flight, or the further carriage of any cargo, or to proceed with any flight without all or any part of the cargo.
- 5.3.4 Provided that no regulations/laws to the contrary are applicable, in the event any flight is, pursuant to Article 5.3.3, cancelled, diverted, postponed, delayed or advanced or is terminated at a place other than the place of destination or in the event the carriage of any shipment is so cancelled, diverted, postponed, delayed, advanced or terminated, the Carrier shall only be liable for losses or damages arising directly from such events if the Carrier either intended to cause such losses or damages or was reckless with actual knowledge that damage, loss, delay would probably result. In the event the carriage of the shipment or any part thereof is so terminated, delivery thereof by the Carrier to any transfer agent for transfer or delivery or the placing of such shipment in storage shall be deemed complete delivery under the contract of carriage, and the Carrier shall be without any further liability with respect thereto, except to give notice of the disposition of the shipment to the Shipper or to the Consignee, at the address stated in the Air Waybill or Shipment Record. The Carrier may, but shall not be obligated to, forward the shipment for carriage by any other route or forward the shipment as agent for the Shipper or the Consignee for onward carriage by any transportation service on behalf of the Shipper or the Consignee. The cost of doing so attaches to the cargo.

- 5.3.5 Unless otherwise agreed, and subject to applicable laws, regulations and orders, the Carrier is authorised to determine the priority of carriage as between shipments, and as between cargo and mail or passengers. The Carrier may likewise decide to remove any articles from a shipment, at any time or place whatsoever, and to proceed with the flight without them. If as a result of determining such priority, cargo is not carried or carriage thereof is postponed or delayed or if any articles are removed from a shipment, the Carrier will not be liable to Shipper or Consignee or to any other party for any direct or indirect consequences therefore.

#### 5.4 Certain Rights of Carrier over Shipment in Course of Carriage

If in the opinion of the Carrier it is necessary to hold the shipment at any place for any purpose, either before, during or after carriage, the Carrier may, upon giving notice thereof to the Shipper, store the shipment for the account and at the risk and expense of the Shipper, in any warehouse or other available place, or with the customs authorities; or the Carrier may deliver the shipment to another transportation service for onward carriage to the Consignee. The Shipper shall indemnify the Carrier against any expense or risk so incurred.

### 6 Authority and Indemnity of Shipper

#### 6.1 Authority to Tender Cargo for Acceptance

It is agreed that any person who tenders cargo to the Carrier for carriage for or on behalf of the Shipper is authorized to do so

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subject to these conditions.

### 6.2 Shipper's Authority

The Shipper warrants that in agreeing to these Conditions it has the authority of the person or persons owning or having an interest in the cargo or any part thereof.

### 6.3 Shipper's Indemnity

Without prejudice to the generality of the forgoing, the Shipper undertakes to indemnify the Carrier in respect of any liability whatsoever and howsoever arising (including without limitation, negligence or breach of contract or intentional or reckless conduct or default of the Carrier or otherwise) in connection with cargo to any person (other than the Shipper) who claims to have, who has or who may hereafter have any interest in the cargo or any part thereof. It is agreed that this indemnity operates irrespective of whether the Carrier's liability arises in events which may constitute a fundamental breach of contract or a breach of a fundamental term.

## 7 SHIPPER'S RIGHT OF DISPOSITION

### 7.1 Exercise of right of disposition

Every exercise of the right of disposition must be made by the Shipper or the Shipper's designated agent, if any, and must be applicable to the whole shipment under a single Air Waybill, or under a single Shipment Record. The right of disposition over the cargo may only be exercised if the Shipper or such agent produces the part of the Air Waybill which was delivered to the Shipper, or communicates such other form of authority as may be prescribed by the Carrier's regulations. Instructions as to disposition must be given in writing in the form prescribed by Carrier. In the event that the exercise of the right of disposition results in a change of Consignee, such new Consignee shall be deemed to be the Consignee appearing on the Air Waybill or in the Shipment Record.

### 7.2 Shipper's Option

Subject to the Shipper's liability to carry out all its obligations under the contract of carriage and provided that this right of disposition is not exercised in such way as to prejudice the Carrier or other Shippers, the Shipper may at its own expense dispose of the cargo either:

- 7.2.1 by withdrawing it at the airport of departure or of destination; or
- 7.2.2 by stopping it in the course of the journey on any landing; or
- 7.2.3 by calling for it to be delivered at the place of destination or in the course of the journey to a person other than the Consignee named in the Air Waybill or Shipment Record; or
- 7.2.4 by requiring it to be returned to the airport of departure;
- 7.2.5 Provided that if, in the opinion of the Carrier, it is not reasonably practicable to carry out the order of the Shipper, the Carrier shall so inform the Shipper promptly and the Carrier shall thenceforth be under no obligation to carry out any such order.

### 7.3 Payment of Expenses

The Shipper shall be liable for and shall indemnify the Carrier for all loss or damage suffered or incurred by the Carrier as a result of the exercise of the Shipper's right of disposition. The Shipper shall reimburse the Carrier for any expenses occasioned by the exercise of its right of disposition.

### 7.4 Extent of Shipper's Right

The Shipper's right of disposition shall cease at the moment when, after arrival of the cargo at the destination, the Consignee takes possession or requests delivery of the cargo or Air Waybill, or otherwise shows its acceptance of the cargo. Nevertheless, if the Consignee declines to accept the Air Waybill or the cargo, or if the Consignee cannot be communicated with, such right of disposition shall continue to vest in the Shipper.

## 8. Delivery

### 8.1 Notice of arrival

Notice of arrival of the shipment will, in the absence of other instructions, be sent to the Consignee and any other person whom the Carrier has agreed to notify as evidenced in the Air Waybill or

Shipment Record; such notice will be sent by ordinary methods. The Carrier is not liable for non-receipt or delay in receipt of such notice.

### 8.2 Delivery of Shipment

Except as otherwise specifically provided in the Air Waybill or Shipment Record, delivery of the shipment will be made only to the Consignee named therein, or the Consignee's agent. Delivery to the Consignee shall be deemed to have been effected:

- 8.2.1 when the Carrier has delivered to the Consignee or the Consignee's agent any authorisation from the Carrier required to enable the Consignee to obtain release of the shipment, and
- 8.2.2 when the shipment has been delivered to customs or other government authorities as required by applicable law or customs regulation.

### 8.3 Place of Delivery

The Consignee must accept delivery of and collect the shipment at the airport of destination unless delivery service to the address of the Consignee has been arranged for between the Shipper or Consignee and Carrier.

### 8.4 Failure of Consignee to take Delivery

8.4.1 Subject to the provisions of Article 8.5 hereof, if the Consignee refuses or fails to take delivery of the shipment after its arrival at the airport of destination, the Carrier will endeavour to comply with any instructions of the Shipper set forth on the face of the Air Waybill, or in the Shipment Record. If such instructions are not so set forth or cannot reasonably be complied with, the Carrier shall notify the Shipper of the Consignee's failure to take delivery and request for the Shipper's instructions. If no such instructions are received within thirty (30) days, the Carrier may sell the shipment in one or more lots at public or private sale, or destroy or abandon such shipment.

8.4.2 The Shipper is liable for all charges and expenses resulting from or in connection with the failure to take delivery of the shipment, including, but not limited to, carriage charges incurred in returning the shipment if so required by the Shipper's instructions. If the shipment is returned to the airport of departure and the Shipper refuses or neglects to make such payments within fifteen (15) days after such return, the Carrier may dispose of the shipment or any part thereof at a public or private sale after giving the Shipper ten (10) days' notice of its intention to do so.

### 8.5 Disposal of Perishables

When a shipment containing perishable articles as defined in the Carrier's regulations is delayed in the possession of the Carrier, is unclaimed or refused at place of delivery, or for other reasons is threatened with deterioration, the Carrier may immediately take such steps as it sees fit for the protection of itself and other parties in interest, including but not limited to the destruction or abandonment of all or any part of the shipment, the sending of communications for instructions at the cost of the Shipper, the storage of the shipment or any part thereof at the risk and cost of the Shipper or the disposition of the shipment or any part thereof at public or private sale without notice.

In the event of the sale of the shipment as provided for above, either at the place of destination or at the place to which the shipment has been returned, the Carrier is authorised to pay to itself and other transportation services out of the proceeds of such sale all charges, advances, and expenses of the Carrier and other transportation services plus costs of sale, holding any surplus subject to the order of the Shipper. A sale of any shipment shall, however, not discharge the Shipper and/or the owner of any liability hereunder to pay any deficiencies.

### 8.6 Responsibility for Charges

By accepting delivery of the Air Waybill and/or the shipment, the Consignee shall become liable for payment of all costs and charges in connection with the carriage. Unless otherwise agreed, the Shipper shall not be released from its own liability for these costs and charges and will remain jointly and severally liable with the Consignee. The Carrier may make delivery of the shipment or the Air Waybill conditional upon payment of these costs and charges.

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### 9. Pick-up and Delivery Services

#### 9.1 Shipments

Shipments are accepted for carriage from their receipt at the Carrier's cargo terminal or airport office at the place of departure to the airport at the place of destination or the respective facility as designated by the Carrier.

#### 9.2 Availability of Service

Pick-up service and delivery service will be available at the points, to the extent and subject to the rates and charges established for such services in accordance with the applicable regulations of the Carrier.

#### 9.3 Request for Service

Pick-up service, if available, will be provided when requested by the Shipper. Except when otherwise provided by the Carrier's tariffs, delivery service may be provided unless contrary instructions are given by the Shipper or by the Consignee. Such contrary instructions must be received by the Carrier prior to removal of the shipment from the Carrier's airport terminal at destination.

#### 9.4 Shipment for which Service is Unavailable

Pick-up service and delivery service will not be provided by the Carrier without special arrangement for any shipment which, in the opinion of the Carrier, because of its volume, nature, value or weight is impractical or unsuitable for the Carrier to handle in the normal course.

#### 9.5 Liability

If pick-up service or delivery service is performed by the Carrier, such surface transportation shall be upon the same terms as to liability as set forth in Article 11 hereof. In any other event, and to the extent that other mandatory regulations apply, the issuing Carrier and last Carrier, respectively, in forwarding and re-forwarding the cargo shall do so only as agents of the Shipper, owner, or Consignee, as the case may be, and shall not be liable for any damage arising out of such additional carriage unless provided to have been caused by its acts or omissions done with intent to cause damage, death, injury, loss or delay or recklessly with actual knowledge that damage, death, injury, loss, delay would probably result. The Shipper, owner and Consignee hereby authorize such Carriers to do all things deemed advisable to effect such forwarding or re-forwarding, including, but without limitation, selection of means of forwarding or re-forwarding and the routes thereof (unless these have been specified by the Shipper in the Air Waybill or Shipment Record), execution and acceptance of documents of carriage (which may include provisions excluding or limiting liability) and consigning of cargo with no declaration of value, notwithstanding any declaration of value in the Air Waybill or Shipment Record.

### 10. Successive Carriers

Carriage to be performed under one contract of carriage by several successive Carriers is regarded as a single operation.

### 11. Carrier's Liability

11.1 The Carrier is liable to the Shipper, Consignee or any other person for damage sustained in the event of destruction of loss of, or damage to, or delay in the carriage of, cargo only if the occurrence which caused the damage so sustained took place during the carriage as defined in Article 1.1.

11.2 Except as may be otherwise provided in any applicable Convention, the Carrier is not liable to the Shipper, Consignee or any other person having an interest in the cargo in tort or contract or bailment or otherwise for any consequences of any delay in the collection of cargo or loss of or damage to or deterioration of cargo or mis-delivery or failure to deliver or delay in delivery of cargo for any reason whatsoever including, without limiting the foregoing, the negligence, recklessness, gross negligence or wilful conduct or default on the part of the Carrier or its servants or agents whether or not the same occurs in the course of performance by or on behalf of the Carrier under the contract or in events which are in the contemplation of the Carrier and/or Shipper or in events which are foreseeable by them or either of them or in events which may constitute a

fundamental breach of contract or breach of a fundamental term.

11.3 The Carrier will not be liable for any loss, damage or expense arising from death due to natural causes or death or injury of any animal caused by conduct or acts of the animal itself or of other animals such as biting, kicking, goring or smothering, nor for that caused or contributed to by the condition, nature or propensities of the animal, or by defective packing of the animal, or by the inability of the animal to withstand unavoidable changes in its physical environment inherent in the carriage by air. Furthermore, the Carrier will not be liable for loss or damage resulting from the inherent defect, quality or vice of the cargo carried.

11.4 Carrier shall not be liable in any event for any (i) loss of business opportunities and contracts, revenue, profits, anticipated savings, goodwill or reputation (whether arising directly or not) and (ii) special, indirect or consequential loss or damage arising from carriage subject to these Conditions, whether or not the Carrier had knowledge that such loss or damage might be incurred.

11.5 If the damage was caused or contributed to by the negligence or other wrongful act or omission of the person claiming compensation, or the person from whom the rights are derived from, the Carrier shall be wholly or partly exonerated from liability to the claimant to the extent that such negligence or wrongful act or omission caused or contributed to the damage.

11.6 Liability of Carrier shall not exceed 29 Special Drawing Rights per kilogram of cargo destroyed, lost, damaged or delayed. If, with the agreement of the Carrier, the Shipper has made a special declaration of value for carriage and has paid the supplementary sum applicable, it is agreed that any liability shall in no event exceed such declared value for carriage stated on the face of the Air Waybill or included in the Shipment Record. All claims shall be subject to proof of value.

11.7 In the case of loss, damage or delay of part of the shipment, or of any object contained therein, the weight to be taken into consideration in determining the amount to which the Carrier's liability is limited shall be only the weight of the items (smallest unit of account being an object, package, box, or carton) affected when unpacked irrespective of the number of packages identified on Air Waybill or Shipment Record. Nevertheless, when the loss, damage or delay of part of the shipment, or of an object contained therein, affects the value of other packages, boxes or cartons covered by the same Air Waybill, the total weight of such affected package, box or cartons shall also be taken into consideration in determining the limit of liability. In the absence of proof to the contrary, the value of such part of the shipment lost, damaged or delayed as the case may be, shall be determined by reducing the total value of the shipment in the proportion that the weight of that part of the shipment lost, damaged or delayed has to the total weight of the shipment.

11.8 The Shipper, owner and Consignee whose property causes damage to or destruction of another shipment or of the property of the Carrier, shall indemnify the Carrier for all losses and expenses incurred by the Carrier as a result thereof. Cargo which, because of inherent defect, quality or vice or because of defective packing, is likely to endanger aircraft, persons or property may be abandoned or destroyed by the Carrier at any time without notice and without liability therefore attaching to the Carrier.

11.9 A Carrier issuing an Air Waybill for carriage over the lines of another Carrier does so only as agent for such other Carrier. Any reference in a Shipment Record to carriage to be performed by another Carrier shall be deemed to refer to carriage to be provided as principal by such other Carrier. No Carrier shall be liable for the loss, damage or delay of cargo not occurring on its own line except that the Shipper shall have a right of action for such loss, damage or delay on the terms herein provided against the first Carrier and the Consignee or other person entitled to delivery shall have such a right of action against the last Carrier under the contract of carriage.

11.10 Whenever the liability of the Carrier is excluded or limited under these Conditions, such exclusion or limitation shall apply to the

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agents, servants or representatives of the Carrier and also to any Carrier whose aircraft or other means of transportation is used for carriage.

**12 Limitations on Claims and Actions**

- 12.1 Receipt by the person entitled to delivery of the cargo without complaint is prima facie evidence that the same has been delivered in good condition and in accordance with the contract of carriage.
- 12.2 No action shall be maintained in the case of loss or damage to goods unless a complaint is made to the Carrier in writing by the person entitled to delivery. Such complaint shall be made:
- (a) in the case of visible damage to or partial loss of the goods, immediately after its discovery and at the latest within fourteen (14) days from the date of receipt of the goods;
  - (b) in the case of other damage to the goods, within fourteen (14) days from the date of receipt of the goods;
  - (c) in the case of delay, within twenty-one (21) days from the date on which the goods were placed at the disposal of the person entitled to delivery;
  - (d) in the case of non-delivery of the goods, within one hundred and twenty (120) days from the date of issue of the air waybill.

12.3 The right to damages shall be extinguished if an action is not brought within two (2) years, reckoned from the date of arrival at the destination, or from the date on which the aircraft ought to have arrived, or from the date on which the transportation stopped. The method of calculating that period shall be determined by the law of the court seized of the case.

**13 Overriding Law**

- 13.1 To the extent that any provision contained or referred to in the Air Waybill or Shipment Record or herein is contrary to anything contained in the applicable Convention, and in any applicable laws, government regulations, orders or requirements that cannot be waived by agreement of the parties, such provision shall not apply.
- 13.2 To the extent not in conflict with any applicable Convention or law in the jurisdiction in which the contract was made, these Conditions and all services provided by the Carrier to the Shipper and the Consignee shall be governed by the laws of Hong Kong.
- 13.3 The invalidity of any provision shall not affect the validity of any other provision contained herein.

**14. Modification and Waiver**

No agent, servant or representative of the Carrier has authority to alter, modify or waive any provision of the contract of carriage or of these Conditions.

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