

# Standard Trading Terms and Conditions

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GAC Thoresen Logistics Ltd

April 2022

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The customer's attention is drawn to specific clauses in these conditions which exclude or limit the company's liability and to the clauses which require the customer to indemnify the company in certain circumstances.

### 1. DEFINITIONS AND APPLICATION

#### 1.1 In these Conditions:

**"Company"** means GAC Thoresen Logistics Ltd.

**"Consignment"** means Goods whether a single item or more items, in bulk or contained in one or more parcel, package or container sent at one time in one load from one address to another address;

**"Customer"** means the individual, business or company who contracts with the Company for the provision of the Services;

**"Goods"** means any goods (including packaging and any pallets) in respect of which the Services are provided;

**"Transport Services"** mean the carriage of Goods by road, including the loading and unloading of the Goods by the Company;

**"Services"** means the Warehousing Services and the Transport Services; and

**"Warehousing Services"** mean the receipt, storage, handling and related warehousing services provided by the Company.

### 2. APPLICATIONS

2.1. Subject to clauses 2.2 and 2.3, all Services and activities of the Company in the course of business of the Company whether gratuitous or not are subject to these Conditions.

2.2. If any legislation is compulsorily applicable to any business undertaken, and any part of these Conditions is incompatible with such legislation, such part shall, as regards such business, be overridden to that extent and no further.

2.3. If the Company provides services which are not Transport Services or Warehousing Services, such services shall be provided by the Company subject to the following terms and conditions:

(a) International carriage of goods by road, air, sea, rail or waterways, the Multimodal Transport Act 2005, of The Kingdom of Thailand Conditions will apply;

2.4. Every variation, cancellation or waiver of these Conditions must be in writing signed by a statutory director of the Company.

2.5. These Conditions together with any schedule or appendix or other document expressly incorporated by the parties (if any) shall for the entire agreement between the

Company and the Customer relating to the subject matter of these Conditions. No terms or conditions additional to or at variance with these Conditions which may be attached to any of the Customer's documentation shall be of effect.

### **3. PROVISION OF SERVICES BY THE COMPANY**

3.1 The Company shall:

- (i) provide the Services with reasonable care, diligence, skill and judgment and shall have due regard to the interests of the Customer in exercising any discretion permitted under these Conditions;
- (ii) comply with all relevant legislation, statutes, regulations and other enactments including the relevant transport regulations having the force of law from time to time in relation to the provision of the Services.

3.2 The Company may employ the services of any other supplier for the purpose of fulfilling the Services in whole or in part. The Company contracts for itself and as agent of and trustee for its servants and agents and all other suppliers referred to in this clause and such other supplier' servants and agents and every reference in these Conditions to "the Company" shall be deemed to include every other such supplier, servant and agent with the intention that they shall have the benefit of the Conditions and collectively and together with the Company be under no greater liability to the Customer or any other party than is the Company hereunder.

3.3 Notwithstanding clause 3.2 the carriage of any Goods by rail, sea, inland waterway or air is arranged by the Company as agent of the Customer and shall be subject to the conditions of the rail, shipping, inland waterway or air carrier contracted to carry the Goods. The Company shall be under no liability whatsoever to whomsoever and howsoever arising in respect of such carriage: Provided that where the Goods are carried partly by road and partly by such other means of transport any loss, damage or delay shall be deemed to have occurred while the Goods were being carried by road unless the contrary is proved by the Company.

### **4. OBLIGATIONS OF THE CUSTOMER**

4.1 The Customer warrants that it is either the owner or the authorised agent of the owner of the Goods and that it is authorised to accept and is accepting these Conditions not only for itself but also as agent for and on behalf of the owner of the Goods.

4.2 The Customer warrants to the Company that:

- (i) unless otherwise agreed in writing before delivery of the Goods to the Company, no Goods comprise, contain or are packaged in any dangerous, noxious or illegal substance;
- (ii) unless otherwise agreed in writing before delivery of the Goods to the Company, no Goods require temperature control;
- (iii) none of the Goods harbour or are likely to harbour or encourage vermin or other pest;

- (iv) none of the Goods will contaminate, taint or cause danger, injury or pollution or damage to any person or the premises from where the Services are provided and/or equipment used in the provision of the Services, or any other goods and/or equipment stored at such premises or the environment;
  - (v) all Goods are appropriately packed, labelled, stowed and marked in a manner appropriate to any operations or transactions affecting the Goods and the characteristics of the Goods; and
  - (vi) all Goods are accompanied by all necessary written information and documents, including information concerning the nature of the Goods, the appropriate manner and method of storage, handling and transportation of the Goods and relevant health and safety information relating to the same, reasonably required in order to enable the Company to (i) arrange and safely perform the Services and (ii) comply with all laws, regulations and conditions applicable to the Goods within all actual and potential countries of despatch, receipt and transit.
- 4.3 The Customer shall indemnify and keep indemnified the Company against all losses, damage, claims, costs, demands, liabilities, penalties and expenses (including legal expenses) arising from any breach of Clauses 4.1 and 4.2.
- 4.4 The Customer will notify the Company in writing of all changes in its business which could have an impact on the Services.

## **5. CHARGES AND PAYMENT TERMS**

- 5.1 In consideration for the provision of the Services, the Customer shall pay the charges calculated in accordance with [rate schedule or other document] attached hereto/shall pay the charges from time to time specified by the Company (the "Charges"). All the Charges are exclusive of VAT and all other applicable taxes and duties.
- 5.2 In respect of storage charges part days are charges at full day rates and are payable weekly/monthly in arrears unless otherwise agreed in writing. Charges are incurred on a day to day basis and are payable for both the day of receipt and the day of removal.
- 5.3 Unless otherwise agreed in writing, the Charges are due for payment within 30 days of the relevant invoice date, and all payments shall be made free and clear from any deduction in respect of bank charges or otherwise and from any set-off, abatement or counterclaim of any kind.
- 5.4 Without prejudice to any other rights or remedies of the Company (whether expressly specified in these Conditions or otherwise) in the event that the Customer fails to pay any of the Charges and/or any other sums due on their due dates for payment the Company shall be entitled to:
- (i) on 7 days' written notice, suspend performance of all or any Services already ordered by the Customer and which the Company has accepted under these Conditions until all sums owing have been paid in full; and/or
  - (ii) charge interest on all sums due at 1% over the base lending rate from time to time of Siam Commercial Bank PLC from the due date until payment (whether before or after judgement), such interest to accrue on a daily basis.

- 5.5 The Charges cover handling of Goods between 0800 to 1700 Hrs and from Monday to Saturday. Any Services required outside these hours will attract additional charges.
- 5.6 The Charges may be subject to adjustment at any time for increases in the cost of fuel and/or for any legislative changes.
- 5.7 Without prejudice to clause 5.6, the Company is entitled to vary the Charges at any time by giving a minimum of [7] days' written notice in writing to the Customer.
- 5.8 The Company shall have a general lien and a particular lien on the Goods and documents relating to the Goods for payment of all monies due to the Company by the Customer under these Conditions. The Company shall be entitled to continue to charge the Customer for any Charges and interest accruing during the exercise of its lien. The Company reserves the right to move any Goods which it holds under lien to alternative storage provided it shall use reasonable endeavors to keep the Goods safe and can require the Customer to reimburse the Company for the additional expenses to be incurred in keeping the Goods.

## **6. THE COMPANY'S LIABILITY LOSS OR DAMAGE TO GOODS**

- 6.1 The Company's liability for loss or damage to Goods during the Transport Services
- (i) Subject to the remainder of clause 6, the Company shall be liable for loss, destruction, mis-delivery of or damage to Goods whilst in transit which results from the Company's negligence or wilful default up to a maximum amount:
- (a) the value of any Goods lost, destroyed, mis-delivered or damaged, or
- (b) a sum at the rate of THB 30 per kilo of gross weight of any Goods lost or damaged, subject to a limit of THB 200,000 per Consignment;  
Whichever is the lesser.
- (ii) **Signed Receipts**  
The Company shall, if so required, sign a document prepared by the sender acknowledging the receipt of the Goods but no such document shall be evidence of the condition or of the correctness of the declared nature, quantity, or weight of the Goods at the time it is received by the Company and the burden of proving the condition of the Goods in receipt by the Company and that the Goods were of the nature, quantity or weight declared in the relevant document shall rest with the Customer. The
- Customer shall retain full responsibility for the Goods and risk for the Goods until such time that the Company has issued a Goods Received Note (GRN) in respect thereof.
- 6.2. The Company's liability for loss or damage to Goods during the Warehousing Services

- 6.3. Subject to the remainder of clause 6, the Company shall be liable for loss, destruction of or damage to Goods which occur during the Warehousing Services which results from the Company's negligence or wilful default up to a maximum of the value of any Goods lost, destroyed or damaged.
- (a) the value of any Goods lost, destroyed, mis-delivered or damaged, or
  - (b) a sum at the rate of THB 30 per kilo of gross weight of any Goods lost or damaged, subject to a limit of THB 200,000 per occurrence;  
Whichever is the lesser.
- 6.4. On receipt of any Goods the Company will so far as reasonably practicable carry out an external check of the condition of the Goods. The delivery notes shall be endorsed with details of any apparent problem with the condition of the Goods, and such endorsement shall be conclusive evidence that the Goods were received by the Company in the condition described in the endorsement.
- 6.5. Value of Goods  
For the purposes of assessing the Company's liability under clause 6, the value of Goods will be the invoice price (excluding VAT) to Customer or the manufacturing cost (excluding VAT) incurred by the Customer for such Goods (as the case may be), or in the case of damaged Goods, the reduction in value calculated on the aforesaid basis. If the Goods were obsolete due to age or deterioration then their monetary value for the purposes of assessing the Company's liability under this clause will be the lower of (1) the invoice price (excluding VAT) to the Customer or the manufacturing cost (excluding VAT) incurred by the Customer for such Goods (as the case may be) and (2) the value realisable by the Customer in respect thereof.
- 6.6. Exclusions and overall liability for the Goods
- (i) Without prejudice to clauses 6.1 and 6.2, the Company will not be liable for:
    - (a) any claim under clause 6.1 unless the same is notified in writing to the Company at the time of delivery of the Goods by the Company;
    - (b) any claim under clause 6.2 unless the same is notified to the Company in writing within 48 hours of the existence of the claim coming to the Customer's knowledge or the Goods leaving the warehouse from where the Services were provided, whichever is the earlier;
    - (c) loss of or damage to any Goods due to faulty or inadequate packaging, except to the extent that such loss or damage is due to the negligence of the Company when clause 6.1 or 6.2 may apply;
    - (d) Goods retained or confiscated for any reason whatsoever at any customs point, or damaged thereat;
    - (e) Goods lost or damaged unless such Goods were in good and sellable condition when delivered to the Company;
    - (f) the contents of any sealed carton or container which bears no evidence of having been opened;
    - (g) Goods found to be missing on dismantling of any pallet load.
  - (ii) The maximum aggregate liability of the Company under clause 6 howsoever arising (whether caused by negligence or otherwise) during any one calendar year shall not exceed US\$ 250,000 or a pro rata amount for any calendar year which is less than 12 months long.
- 6.7. Save as set out in clause 6, the Company shall not be liable for any loss, destruction, mis-delivery of or damage to the Goods howsoever arising (whether caused by

negligence or otherwise). Having regard to the nature of the Service and the availability to the parties of suitable insurance the parties have agreed that the risks respectively borne by them in relation to loss of, damage to or destruction of Goods are reasonable.

## **7. THE COMPANY'S LIABILITY FOR LOSS OR DAMAGE TO THE CUSTOMER'S PROPERTY**

The Company shall only be liable to the Customer for loss of or damage to the Customer property (other than Goods) caused by the Company's negligence or wilful default, such liability shall be limited to the lesser of the reasonable repair cost or replacement cost (with an item of the same age and in the same condition) of that property and US\$10,000 per incident or series of associated incidents. Save as set out in this clause 7, the Company shall not be liable for loss of or damage to the Customer property (other than Goods) howsoever arising (whether caused by negligence or otherwise).

## **8. GENERAL LIABILITY OF THE COMPANY**

8.1 Notwithstanding any other provision of these Conditions but subject to the remainder of this clause 8, the Company's liability in respect of all claims, losses or damages, whether arising from tort (including negligence), bailment, breach of contract, breach of statutory duty or otherwise under or in connection with these Conditions, performance or any failure or delay in performance of the Services shall be limited so that:

- (i) the Company shall have no liability for any loss of profit, loss of sales, loss of business, loss of goodwill or reputation, third party claims (in each case whether direct or indirect) or for any indirect or consequential loss;
- (ii) the Company's maximum aggregate liability for all such matters which arise or incur under these Conditions (whether caused by negligence or otherwise) in any calendar year will be limited to US\$250,000 or a pro rata amount for any calendar year which is less than 12 months long. For the avoidance of doubt, the Company's liability under clauses 6 and 7 shall be included when calculating its aggregate liability under this clause.

### **8.2 Indemnity from the Customer**

- (i) Subject to the remainder of this clause 8.3, the Customer shall indemnify the Company against any costs, damages, claims, liabilities and expenses resulting from any claim made by any third party against the Company ("Claim"):
  - (a) when the Claim arises from or in connection with the Services (whether caused by the Company's negligence or otherwise); and
  - (b) to the extent the Claim exceeds the Company's liability to the Customer under clauses 6, 7 and/or 8.
- (ii) The indemnity contained in clause 8.2 shall not apply to the extent the Claim related to death or personal injury and/or damage to property.



## 9. INSURANCE

The Company will maintain in force Transport Operator's insurance policy to cover its liability under clause 6. It is for the Customer to make the necessary arrangements to effect insurance in respect of the Goods.

## 10. FORCE MAJEURE

Neither the Company nor the Customer shall be liable to the other for any delay or non-performance of its obligations under these Conditions to the extent that such non-performance is due to an official or unofficial industrial action, industrial sabotage, industrial dispute, fire, shortage of, inability or delay in obtaining fuel, supplies, labour, materials or services, act of Government or statutory authority, act of God, act of war, terrorism, shortage of fuel, software defects or failures, epidemics, abnormal weather conditions and other events beyond a party's reasonable control.

## 11. NOTICE

Any notice given by either party to the other in connection with any matter relating to these Conditions shall be given in writing and shall be sent by prepaid registered post return receipt requested or delivered by hand against signature for receipt to the recipient's registered office. A notice shall be effective from the date of its receipt.

## 12. ASSIGNMENT

- 12.1 Subject to clauses 3.2 and 12.2, neither party shall assign, transfer or sub-contract any of its rights and obligations under these Conditions in whole or in part or the benefit thereof or its rights thereunder without the other party's prior written consent (such consent not to be unreasonably withheld or delayed).
- 12.2 The Company may assign or transfer any of its rights and obligations under these Conditions in whole or in part or the benefit thereof or its rights thereunder to any member of the GAC group of companies.

## 13. CONFIDENTIALITY

- 13.1 Each Party agrees to treat as secret and confidential and not at any time nor for any reason to disclose or permit to be disclosed to any person or otherwise make use of or permit to be made use of any information supplied by or obtained from the other party, including but not limited to the arrangements between the parties set out herein and information relating to the Goods, Services, Charges, customers, marketing, or promotions, business affairs, operating methods, administration systems or finances or any such information relating to a supplier, customer or client of the other party save to the extent that such information is:
- (i) already in its possession other than as a result of a breach of this clause;
  - (ii) is or subsequently becomes in the public domain other than as a result of a breach of this clause;
  - (iii) required by law;
  - (iv) disclosed to the professional advisers, auditors and bankers of each party;
  - (v) disclosed after the other party has given written approval; or
  - (vi) used for the performance of the obligations under these Conditions.



#### **14. VALIDITY**

If any court or administrative body of competent jurisdiction shall find any provision of these Conditions to be invalid or unenforceable the invalidity or unenforceability of such provision shall not affect the other provisions of these Conditions and all provisions not affected by such invalidity or unenforceability shall remain in full force and effect.

#### **15. RELIANCE**

The Customer acknowledges that it does not place any order for Service under these Conditions in reliance on any representation, warranty or other undertaking or understanding not fully reflected in the written terms of these Conditions and all conditions, warranties of other terms implied by statute or common law are hereby excluded to the fullest extent permitted by law.

#### **16. JURISDICTION AND GOVERNING LAW**

These Conditions and shall be construed in accordance with and governed, by the Laws of The Kingdom of Thailand and shall be subject to the exclusive jurisdiction of the Courts of The Kingdom of Thailand.