

# Local Appendix

## Standard Trading Conditions of Vietnam Logistics Business Association

Amended in Congress VI

### 1. General Principles

1. These Standard Trading Conditions here below referred to as TSTC shall be applied to all services provided, handled, performed, or rendered by the company acting as Freight Forwarder even in case when the company procures a Bill of Lading or other similar document evidencing a contract of carriage between a person other than the company and the customer or owner.
2. In case when the company acting as carrier, the provisions of a document issued by or on behalf of the company bearing a title of or including "Bill of lading", whether negotiable or not, shall be paramount and in the event of a conflict of conditions, the provisions of such a document shall prevail over those of TSTC to the extent of such conflict.
3. As to the services in respect of or relating to customs clearance, taxes, licence, consular documents, certificates of origin, inspection, certificates and other similar services or incidental to, the company is to be always considered to act as agent only and never to be considered to act as Principals.

### 2. Definitions

In these Standard Trading Conditions:

4. "Company" means a Vietnam Logistics Business Association's member who undertakes to provide the services.
5. "Conditions" means the entire undertakings, terms, conditions and clauses embodied in TSTC.
6. "Customer's means any person, or any body, or any company, corporation and enterprise, or any organization.
7. "Owner" means the owner of the goods including shippers and consignees and another person who is or may become interested in the goods and anyone acting on their behalf.
8. "Goods" includes the cargo and any container not supplied or on behalf of the company, or any part thereof in respect of which the company provides a service.
9. "Dangerous goods" means goods listed in: International Maritime Dangerous Goods Code" issued, published by IMO.
10. "Instruction" means a statement of the customer's specific requirements.

### 3. The Company's General Responsibilities

11. The company shall perform its duties with a reasonable degree of care, diligence, skill and judgment.
12. The company shall carry out its services within a reasonable time except in the special arrangement previously made in writing as an instruction to the company.
13. Subject to TSTC and in particular to the discretion reserved to the company below the company shall take all reasonable steps to perform any of the customer's instruction acceptable by the company.
14. If at any stage in any transaction the company should reasonably consider that there is good reason in the customer's interests to depart from any of the customer's instructions, the company shall be permitted to do so and shall not incur any additional liability in consequence of so doing.
15. When using it discretion as permitted in TSTC the company shall do so with due regard to the interested of the customer.

16. If after the contract has been agreed events or circumstances come to the attention of the company which in the opinion of the company make it wholly or in part impossible for the company to fulfil its duties it shall take reasonable steps to inform the customer of those events or circumstances and seek further instructions.

## 4. Customer Obligation

17. The customer warrants that he is either the owner or the authorized agent of the owner of the goods and that he is authorized to accept and is accepting TSTC not only for himself but also as agent for and on behalf of the owner of the goods.
18. The customer warrants that he has reasonable knowledge of matters affecting the conduct of his business, including but not limited to the terms of sale and purchase of the goods and all other matters relating thereto.
19. The customer shall give sufficient and executable instructions.
20. The customer warrants that the description and particular of the goods are complete, accurate and correct.
21. The customer warrants that the goods are properly packed and labelled except where the company has accepted instructions in respect of such services.
22. The customer shall not, unless otherwise previously and expressly agreed in writing, deliver to the company of cause the company to deal with or handle dangerous goods.
23. The customer shall indemnify the company against all liability loss damage cost and expenses whatsoever arising out of the company acting in accordance with the customer's instruction or arising from any breach of the customer of any warranty contained in TSTC or from negligence of the customer.
24. The customer shall pay to the company in cash or as agreed all sum immediately when due without deduction or deferment on account of any claim, counterclaim or set-off.

## 5. Performance of Contract

### 5.1 Company as Agent:

25. To the extent that the company acts as agent, the company does not make or purports to make any contract with the customer for the carriage, storage or handling of the goods nor for any other physical service in relation to them and acts solely on behalf of the customer in securing such services by establishing contracts with the third parties so that direct contractual relationship are established between the customer and such third parties.
26. The company shall not be liable for the acts and omissions of such third parties referred to in clause 25 above nor responsible for any accident or any neglect or default howsoever arising whether willful or otherwise on the part of its agents or those with whom it contracts in respect of the goods to be forwarded, whether they are carried by land, sea or air or warehouse keepers or other persons.
27. When acting as an agent, the company is authorized by the customer to engage in contracts on behalf of the customer and do everything that the customer is bound by these contracts even though it is not fully according to the customer's instructions.
28. The company only forwards goods subject to the contracts, terms, conditions, and regulations of the various persons, companies, or authorities in whole possession the goods may pass.
29. The company shall defend, indemnify, and hold harmless the company in respect of all liability, loss damage, cost or expenses arising out of any contracts made in procurement of the customer's requirements in accordance with clause 27, 28 above.

### 5.2 Company as Principal:

30. To the extent that the company acts as Principal for the performance of the customer's instructions, the company undertakes to perform or in its own name to procure the performance

of the customer's instructions and subject to the provisions of TSTC shall be liable for the loss of or damage to the goods occurring from the time that the goods are taken into its charge until the time of delivery.

31. Notwithstanding other provisions in TSTC, if it is proven that the loss of or damage to the goods occurred, the company's liability shall be determined by the provisions contained in any International Convention or national Law, the provisions of which.
  - a. Cannot be departing from by private contract, to the detriment of the claimant, and
  - b. Would have been applied if the claimant had made a separate and direct contract with the actual provider of the particular service in respect of that service or stage of the carriage where the loss or damage occurred and received as evidence thereof any particular document which must be issued if such International Convention of National Law shall be applied.
32. Notwithstanding other provisions provided in TSTC if it can be proved that the loss of or damage to the goods occurred at sea or inland waterway, the company's liability shall be limited to those set out in the Maritime Code of Vietnam and the company shall be entitled to rely on all defences, exemptions or limitations provided to the carriers by the above code. Reference in the above code to carriage by sea shall be deemed to include reference to carriage of inland waterways and the code shall be construed accordingly.

### 5.3 Air Carriage:

If the company acts as a principal in respect of a carriage of goods by air, the company's liability shall be determined by the provisions contained in the Law on Civil Aviation of Viet Nam.

## 6. General Liability and Limitation of Liability

33. Except insofar as otherwise provided by TSTC, the company shall not be liable for any loss or damage whatsoever arising from:
  - a. The act or omission of the customer or owner or any person acting on their behalf.
  - b. Compliance with the instructions given to the company by the customer, owner or any other person entitled to give them.
  - c. Insufficiency of the backing or labelling of the goods except where such service has been provided by the company
  - d. Handling, loading, stowage or unloading of the goods by the customer or owner person acting on their behalf.
  - e. Inherent vice of goods.
  - f. Riots, civil commotions, strikes, lockouts, stoppage or restraint of labor from whatsoever cause, or
  - g. Any cause with the company could not avoid and the consequences where or if could not prevent by the exercises of reasonable diligence.
34. Notwithstanding other provisions provided in TSTC, the company shall not be liable for loss and damage howsoever caused to the property other than the goods themselves, indirect or consequential loss or damage, loss of profit, delay or deviation.
35. Except insofar as otherwise provided by TSTC, the liability of the company, in any event for any neglect or default or any other matter or thing whatsoever or howsoever arising, and notwithstanding that
  - a. In respect of all claims other than those subject to the provisions of sub clause (b) below, whenever is the least of
    - i. the value of cargo, or
    - ii. 2.00 SDR per gross kilogram, or
    - iii. not exceeding SDR 30,000.00 in any event whatever in respect of any claim the goods lost, damaged, misdirected, misdelivered or in respect of which a claim arises,

- b. In respect of claims for delay where not excluded by the provisions of TSTC, the amount of the company's charges for the services in respect of the goods delayed.
- 36.
- a. Compensation shall be calculated by reference to the invoice value of the goods plus freight and insurance if paid.
  - b. If there be no invoice value for the goods, the compensation shall be calculated by the reference to the value of such goods at the place and time when they are delivered to the customer or should have been so delivered. The value of the goods shall be fixed according to the current market value, or, if there be no commodity exchange price or current market value, by reference to the normal value of goods of the same kind and quality.
37. By special agreement in writing and on payment of additional charges, higher compensation may be claimed from the company not exceeding the value of goods or the agreed value, whichever is lesser.
- 38.
- a. The company shall be discharged of any liability whatsoever unless:
    - i. notice of any claim is received by the company of its agent within 14 days (Sundays, holidays excluded) after the day specified (b) below,
    - ii. suit is brought in the proper forum and written notice thereof received by the company within 9 months after the date specified in (b) below,
  - b. i. In the case of damage to goods, the date of delivery of the goods, and in the case of loss of the goods, the date of the goods should have been delivered. (ii) In the case of delay or non-delivery of the goods, the date that the goods should have been delivered. (iii) In any other case, the event giving rise to the claim.

## 7. Right of Lien and Detention

- 39. The company shall have a general lien on all goods and documents relating to goods in its possession, custody or control for all sum due at any time from the customer or owner, and shall be entitled to sell or dispose of such goods or documents as agent for all and at the expenses of the customer and apply the proceeds in or towards the payment of such sum on 45 days of notice in writing to the customer, upon according to the customer for any balance remaining after payment of any sum due to the company and the cost of sale or disposal the company shall be discharged of any liability in respect of the goods or documents.
- 40. When the goods are labelled to perish or deteriorate, the company's right to sell or dispose of the goods shall arise immediately upon any sum becoming due to the company subject only to the company taking reasonable steps to bring to the customer's attention its intention of selling or disposing of the goods before so doing.
- 41. The company shall be entitled to retained and repaid all brokerages commissions allowances and other remunerations customarily retained by of paid to Freight Forwarders.

## 8. Claim and Arbitration

- 42. Claims against the company shall time barred within 6 months except where and when the company acts as sea or inland waterway carrier and in his own name issued a Bill of Lading of which the time bar will be determined by the provisions therein. The six-month period to the consignee named in the contract or, if no delivery has taken place, from the date of conclusion of the contract.
- 43. In case of dispute, the disputing parties shall in first instance endeavour to settle it by amicable way, however should such effort fail to achieve us objects, the parties thereto agree to submit the case to aboard of arbitrators to be appointed one by each. In case arbitrators by so chosen shall not agree then the decision of the empire arbitrator to be appointed by them shall be final binding upon both parties.

## 9. Jurisdiction and Law

44. TSTC and any act or contract to which they apply shall be governed by the Laws of the Social Republic of Vietnam.