



## STANDARD TRADING CONDITIONS

### PART I - GENERAL CONDITIONS

The Customer's attention is drawn to the Clauses hereof which exclude or limit the Company's liability and those which require the Customer to indemnify the Company in certain circumstances.

### DEFINITIONS AND APPLICATION

- 1 In these Conditions:  
"Company" is Modern Freight Company LLC and this expression includes any parent, subsidiary or affiliated company of the Company.  
"Person" includes persons or any body or bodies corporate.  
"Owner" means the Owner of the goods (including any packaging, containers or equipment) to which any business concluded under these Conditions relates and the consignee or any other Person who is or may become interested in or in possession or entitled to possession of them.  
"Customer" means any Person at whose request or on whose behalf the Company undertakes any business or provides advice, information or services.
- 2 (a) Subject to Sub-Paragraph (b) below, all and any activities of the Company in the course of business whether gratuitous or not are undertaken subject to these Conditions.  
(b) if any legislation is compulsorily applicable to any business undertaken, these Conditions shall, as regards such business, be read as subject to such legislation and nothing in these Conditions shall be construed as a surrender by the Company of any of its rights or immunities or as an increase of any of its responsibilities or liabilities under such legislation to any extent such part shall as regards such business be overridden to that extent and no further.
- 3 The Customer warrants that he is either the Owner or the authorised agent of the Owner and also that he has authority to accept these Conditions not only for himself but also as agent for and on behalf of the Owner.
- 4 In authorising the Customer to enter into any contract with the Company and/or in accepting any document issued by the Company in connection with such Contract, the Owner irrevocably accepts these Conditions for themselves and their agents and for any parties on whose behalf they or their agents may act, and in particular but without prejudice to the generality of this Clause, they accept that the Company shall have the right to enforce against them jointly and severally any liability of the Customer under these Conditions or to recover from them any sums to be paid to the Company by the Customer which upon proper demand have not been paid.

### THE COMPANY

- 5 (a) Subject to clauses 13 and 14 below, the Company shall be entitled to procure any or all of its services as an agent or to provide these services as a principal.  
(b) The offer and acceptance of an inclusive price for the accomplishment of any service or services shall not itself determine whether any such service is or services are to be arranged by the Company acting as agent or to be provided by the Company acting as a contracting principal  
(c) When acting as an agent the Company does not make or purport to make any contract with the Customer for the carriage, storage, packing or handling of any goods nor for any other physical service in relation to them and acts solely on behalf of the Customer in securing services by



establishing Contracts with third parties so that direct contractual relationships are established between the Customer and such third parties.

- (d) The Company shall on demand by the Customer provide evidence of any contract entered into as agent for the Customer. Insofar as the Company may be in default of this obligation, it shall be deemed to have contracted with the Customer as a principal for the performance of the Customer's instructions.
- 6 When and to the extent that the Company has contracted as principal for the performance of any of its services, it undertakes to perform and/or in its own name to procure the performance of those services, and subject always to the totality of these Conditions and in particular to Clauses 26-29 hereof accepts liability for loss of or damage to goods taken into its charge occurring between the time when it takes the goods into its charge and the time when the Company is entitled to call upon the Customer or Owner to take delivery of the goods.
- 7 When and to the extent that the Company in accordance with these Conditions is acting as an agent on behalf of the Customer, it is acting in a customary manner. The Company shall be entitled, and the Customer hereby expressly authorises the Company such entitlement, to enter into contracts on behalf of the Customer and the Owner:
- (a) for the carriage of goods by any route or means or Person,
  - (b) for the storage, packing, trans-shipment, loading, unloading, or handling of the goods by any Person at any place and for any length of time.
  - (c) for the carriage or storage of goods in or on transport units as defined in Sub-clause 19(c) and with other goods of whatever nature, and
  - (d) to do such acts as may in the opinion of the Company be reasonably necessary in the performance of its obligations in the interests of the Customer and the Owner.
- 8 The Company reserves to itself a reasonable liberty as to the means, route and procedure to be followed in the handling, storage and transportation of goods. In any case where no particular route is agreed between the Company and the Customer, the Customer agrees that the agreed route is that which the Company reserves to itself a reasonable liberty to follow.
- 9 The Company is permitted to perform any of its obligations herein by itself or by a sub-contractor. For the purpose of allowing any such sub-contractor to take the benefit of these Conditions, the Company acts as agent and trustee for such sub-contractor in entering into a Contract governed by these Conditions with the Customer and Owner.
- 10 (a) The Company shall have a general lien on all goods and documents relating to goods in its possession, custody or control for all sums due at any time from the Customer or Owner, and shall be entitled to retain such goods and documents against payment of the freightage expenses and other such sums due to him for the transportation.
- (b) The Company shall only be obliged to release goods and items in its possession, custody or control to the extent that the Customer has paid up-to-date for the value of the services provided by the Company, and subject to the Company retaining goods or items with a declared value of twice the value of any amounts owing or which may become owing to the Company by the Customer.
  - (c) Failure to pay for a period of sixty (60) days or more for the service provided, or abandonment of goods or items by the Customer for like period, will result in ownership of any goods or items in the Company's possession, custody or control being transferred to the Company, for disposal, sale or any other action necessary to recover any outstanding balance from the Customer or Owner. The Customer shall, and shall procure that the Owner shall, do and/or execute all or any acts and things in respect of the goods or items, as may be necessary or in any matter connected with the sale and transfer of the goods or items or any part thereof to any party whom



the Company may determine, including but not limited to signing and notarising a power of attorney in favour of the Company, and executing and lodging with the appropriate authorities all relevant documentation required, and/or to sign or authorise the Company to sign any bills of sale, transfer forms and documents and to delegate any of the above powers to any agents or dealers as the Company may appoint, generally to deal with the goods or items in any manner as the Company in its absolute discretion deems fit. Such powers will only be exercised by the Company in the event that the Customer is in default of a period of sixty (60) days from which payment was due. The Customer will have no obligation to disclose information concerning any action taken, if any. Any such action shall not affect the Company's right to take any additional and further action which it considers necessary to obtain payment for the services provided to the Customer.

- (d) In the event of any material default of the Customer which is not corrected within thirty (30) days after receipt of written notice (including by email), then the Company may terminate this agreement at any time and may, at the sole option of the Company, either remove, destroy or otherwise retain such property in its possession until all fees and costs have been paid in full. In the event the Company has retained property of the Customer or Owner and fees or costs remain outstanding thirty (30) days after the notice of default, then the Company may, at its discretion, sell any property retained. After any sale of property the Company will deduct all outstanding fees and costs and return to the Customer the balance of any proceeds. The Customer shall still be liable to the Company for any shortfall of monies due if not covered by the sale. The Customer hereby agrees that the Company may dispose of, or sell, the Customer or the Owner's property hereunder, and the Customer waives any recourse against the Company for such removal or disposal of the Customer or Owner's property.
- 11 The Company shall be entitled to retain and be paid all brokerages, commissions, allowances and other remuneration's customarily retained by or paid to freight forwarders.
- 12 (a) If delivery of the goods or any part thereof is not taken by the Customer or Owner, at the time and place when and where the Company is entitled to call upon such Person to take delivery thereof, the Company shall be entitled to store the goods or any part thereof at the sole risk and cost of the Customer, whereupon the liability of the Company in respect of the goods or that part thereof stored as aforesaid shall wholly cease and the cost of such storage if paid for or payable by the Company or any agent or sub-contractor of the Company shall forthwith upon demand be paid by the Customer to the Company.
- (b) The Company shall be entitled at the expense of the Customer to obtain an order by the competent Court to dispose of perishable goods or non-delivered goods as defined by sub-Clause 12(a) herein as the Court thinks fit.
- 13 (a) Unless expressly agreed otherwise, the Customer's goods and items are not insured by the Company and the Customer will obtain all required insurance on their items. The Customer accepts the obligation to obtain any required insurance and assumes the risk of either not obtaining such insurance or not being able to collect under any policy for any reason. The Company shall not be held responsible for any loss, damage and/or destruction and/or consequential losses of the Customer's goods/items, howsoever caused, provided that the loss, damage or destruction is not proven to have been caused by the willful negligence on the part of the Company.
- (b) The Company will ask the Customer to declare the value of the goods or items for its audit and own insurance policy purposes. However this does not constitute a policy of insurance for the Customer. It is the responsibility of the Customer to obtain and maintain a third party policy of insurance based on their declared values.
- (c) Any additional insurance required could be arranged through the Company at the Company's discretion, the charges of which shall be payable by the Customer in advance. No insurance will



be effected except upon express agreement in writing between the Company and the Customer and all insurances effected by the Company are subject to the usual exceptions and conditions of the policies of the insurance company or underwriters accepting the risk. Unless otherwise agreed in writing the Company shall not be under any obligation to effect a separate insurance on each consignment but may declare it on any open or general policy held by the Company.

- (d) Insofar as the Company agrees with the Customer to arrange insurance, the Company acts solely as agent for the Customer in endeavouring to arrange such insurance and does so subject to the limits of liability contained in Clause 29 hereof. Any claim made in connection with such additional insurance shall be made directly with the additional insurance provider, waving all subrogation rights against the Company. Should the additional insurance provider dispute their liability for any reason whatsoever, the Customer/insured shall not have any recourse against the Company.
- 14
- (a) Except under special arrangements previously made in writing or under the form of a printed document signed by the Company, any instructions relating to the delivery or release of goods in specified circumstances only, such as (but without prejudice to the generality of this Clause) against payment or against surrender of a particular document, are accepted by the Company only as agents for the Customer where third parties are engaged to effect compliance with the instructions
  - (b) The Company shall not be under any responsibility in respect of such arrangements as are referred to under Sub-clause (a) hereof save where such arrangements are expressly agreed to in writing.
  - (c) In any event, the Company's liability in respect of the performance or arranging the performance of such instructions shall not exceed that provided for in these Conditions in respect of loss of or damage to goods.
- 15
- Advice and information in whatever form it may be given is provided by the Company for the Customer only and the Customer shall indemnify the Company against any liability, claims, loss, damage, costs or expenses arising out of any other persons relying upon such advice or information. Except under special arrangements previously made in writing, advice and information which is not related to specific instructions accepted by the Company is provided gratuitously and without liability.
- 16
- (a) Except under special arrangements previously made in writing the Company will not accept or deal with bullion, coin, precious stones, jewelry, valuables, antiques, pictures, human remains, livestock or plants. Should any Customer nevertheless deliver any such goods to the Company or cause the Company to handle or deal with any such goods otherwise than under special arrangements previously made in writing the Company shall be under no liability whatsoever for or in connection with such goods howsoever arising.
  - (b) The Company may at any time waive its rights and exemptions from liability under Sub-clause (a) above in respect of any one or more of the categories of goods mentioned herein or any part of any category. If such waiver is not in writing (excluding email) and signed by an authorised signatory of the Company, the onus of proving such waiver shall be on the Customer.
- 17
- Except following instructions previously received in writing and accepted by the Company, the Company will not accept or deal with goods of a dangerous or damaging nature nor with goods likely to harbour or encourage vermin or other pests, nor goods liable to taint or affect other goods. If such goods are accepted pursuant to a special arrangement and then in the opinion of the Company they constitute a risk to other goods, property, life or health, the Company shall where reasonably practicable contact the Customer, but reserve the right at the expense of the Customer to remove or otherwise deal with the goods.



- 18 Where there is a choice of rates according to the extent of degree of liability assumed by carriers, warehousemen or others, no declaration of value where optional will be made except under special arrangements previously made in writing.

## THE CUSTOMER

- 19 The Customer warrants:

- (a) that the description and particulars of any goods furnished by or on behalf of the Customer are full and accurate
  - (b) that all goods have been properly and sufficiently prepared, packed, stowed, labelled and/or marked, and that the preparation, packing, stowage, labelling and marking are appropriate to any operations or transactions affecting the goods and the characteristics of the goods.
  - (c) that where the Company receives the goods from the Customer already stowed in or on a container, trailer, tanker, or any other device specifically constructed for the carriage of goods by land, sea or air (each hereafter individually referred to as "the transport unit") the transport unit is in good condition, and is suitable for the carriage to the intended destination of the goods loaded therein or thereon.
- 20 Should the Customer otherwise than under special arrangements previously made in writing as set out in Clause 17 above deliver to the Company or cause the Company to deal with or handle goods of a dangerous or damaging nature, or goods likely to harbour or encourage vermin or other pests, or goods liable to taint or affect other goods he shall be liable for all loss or damage arising in connection with such goods and shall indemnify the Company against all penalties, claims, damages, costs and expenses whatsoever arising in connection therewith, and the goods may be dealt with in such a manner as the Company or any other Person in whose custody they may be at any relevant time shall think fit.
- 21 The Customer undertakes that no claim shall be made against any director, servant, or employee of the Company which imposes or attempts to impose upon them any liability in connection with any services which are the subject of these Conditions and if any such claim should nevertheless be made, to indemnify the Company against all consequences thereof.
- 22 The Customer shall save and hold harmless and keep the Company indemnified from and against:
- (a) All liability, losses, damage, costs and expenses whatsoever (including without prejudice to the generality of the foregoing, all duties, taxes, imposts, levies, deposits and outlays of whatsoever nature levied by any authority in relation to the goods) arising out of the Company's action in accordance with the Customer's instructions or arising from any breach by the Customer of any warranty contained in these Conditions of from the negligence or the Customer, and
  - (b) Without derogation from sub-clause (a) above, any liability assumed or incurred by the Company by reason of carrying out the Customer's instructions the Company has reasonably become liable or may become liable to any other party, and
  - (c) All claims, costs and demands whatsoever and by whomsoever made in excess of the liability of the Company under the terms of these Conditions regardless of whether such claims, costs and demands arise from or in connection with the negligence or breach of duty of the Company, its servants, subcontractors or agents, and
  - (d) Any claims of a General Average nature which may be made on the Company.
- 23 (a) The Customer shall pay to the Company in cash or as otherwise agreed all sums immediately when due without reduction or deferment on account of any claim, counterclaim or set-off.



(b) In respect of all sums which are overdue the Customer shall be liable to pay to the Company interest calculated at 2% above the Base Rate for the time being of the UAE Central Bank.

24 Despite any acceptance by the Company of instructions to collect freight, duties, charges or other expenses from the Owner or any other Person the Customer shall remain responsible for such freight, duties, charges or expenses on receipt of evidence of proper demand and in the absence of evidence of payment (for whatever reason) by the Owner or such other Person when due.

25 Where liability for General Average arises in connection with the goods, the Customer shall promptly provide security to the Company or to any other party designated by the Company in a form acceptable to the Company.

## **LIABILITY AND LIMITATION**

26 The Company shall perform its duties with a reasonable degree of care, diligence, skill and judgement.

27 The Company shall be relieved of liability for any loss or damage if and to the extent that such loss or damage is caused by:

- (a) strike, lock-out, stoppage or restraint of labour, the consequences of which the Company is unable to avoid by the exercise of reasonable diligence; or
- (b) any cause or event which the Company is unable to avoid and the consequences whereof the Company is unable to prevent by the exercise of reasonable diligence

28 Except under special arrangements previously made in writing the Company accepts no responsibility for departure or arrival dates of goods.

29 (a) Subject to sub-clause 2 (b) above and sub-clause (d) below the Company's liability howsoever arising and notwithstanding that the cause of loss or damage be unexplained shall not exceed:

(i) In the case of claims for loss or damage to goods:

- (a) in respect of air freight only, a sum at the rate of Dirhams 30 (thirty) per kilo of gross weight of any goods lost or damaged, subject to a limit of Dirhams 20,000 (twenty thousand) per package; or
- (b) for all other types of freight, the value of the goods lost or damaged, or
- (c) the value of the contract price received by the Company from the Customer,

in each case whichever shall be the least.

(ii) In case of all other claims:

- (a) the value of the goods the subject of the relevant transaction between the Company and the Customer, or
- (b) the value of the contract price received by the Company from the Customer, whichever shall be the least.

For the purpose of sub-clause 29 (a) the value of the goods shall be their declared value when they were or should have been shipped.

(b) Subject to sub-clause 2 (b) above, and sub-clause (d) below, the Company's liability for loss or damage as a result of failure to deliver or arrange delivery of goods in a reasonable time or (where there is a special arrangement under Clause 28) to adhere to agreed departure or arrival dates shall





not in any circumstances whatsoever exceed a sum equal to twice the amount of the Company's charges in respect of the relevant transaction.

(c) Save in respect of such loss or damage as is referred to at sub-clause (b) and subject to sub-clause 2(b) above and sub-clause (d) below, the Company shall not in any circumstances whatsoever be liable for any special, indirect or consequential loss such as (but not limited to) loss of profits, loss of business, loss of market or the consequences of delay or deviation however caused.

(d) By special arrangement agreed in writing, the Company may accept liability in excess of the limits set out in sub-clauses (a) to (c) above upon the Customer agreeing to pay the Company's additional charges for accepting such increased liability. Details of the Company's additional charges will be provided upon request.

30 (a) These Conditions are without prejudice to the terms of any international convention which is applicable by law to any dispute which may arise in relation to the carriage of the goods.

(b) If the Company acts as a principal in making an agreement for the carriage of goods by air, the following notice is hereby given:

If the carriage involves an ultimate destination to or stop in a country other than the country of departure, the Warsaw Convention may be applicable and the Convention governs and in most cases limits the liability of carriers in respect of loss of or damage to cargo. Agreed stopping places are those places (other than the places of departure and destination) shown under requested routing and /or those places shown in the carrier's timetables as scheduled stopping places for the route. The address of the first carrier is the airport of departure.

31 Receipt by the Customer or Owner of visibly damaged goods without complaint shall invalidate any claim against the Company. Any claim against the Company arising from loss of or damage to the goods not visible at the time of receipt by the Customer or Owner must be made in accordance with the provisions of Art. 317 UAE Code of Commercial Practice, Federal Law No. 18 of 1993.

## EXPORT COMPLIANCE

32 The Company's intention is to comply with all applicable export control and foreign trade laws, rules and regulations, whether existing or future, including policies, directives, sanctions, orders and similar of any regulatory or governmental body or international organization, recognised by or having effect in the United Arab Emirates or on the Company's business globally (**Laws**), and which place a restriction, control or embargo on trade, export of products, services, information, the ability to make, facilitate or receive payments, or deal with certain entities or persons (an **Export Restriction**).

33 The Customer and Owner are hereby put on notice of the Company's position and each certify that to the best of its knowledge and belief, the goods to be exported are not subject to any Export Restriction or intended for use for any prohibited purpose, and are not destined to be received by any entity or individual which is subject to an Export Restriction. Each of the Customer and the Owner undertake that it will not, by any act or omission, cause the Company, its officers, employees or affiliates, to be in breach of any Laws or Export Restrictions.

34 The performance and completion of any contract or purchase order by the Company remains subject to the condition that it will not infringe any Laws or Export Restrictions. The Company reserves the right in its sole discretion to withdraw from, refuse to enter into or continue with, any transaction or contract, if in its reasonable opinion it considers that to do so may violate or result in non-compliance with any Laws or Export Restrictions to which the Company, its officers, employees or affiliates are subject. In such case, or in the event of any refusal, withdrawal or delay in receipt of an applicable export license or authorisation, the Company shall not be held responsible or liable for any claims, damages, losses, costs or expenses of any kind, including penalties for late delivery or failure to



deliver goods. The Customer fully indemnifies and holds the Company, its officers, employees and affiliates harmless against the same.

#### **TRANSACTION TAX**

35 (a) All sums payable under any contract by or on behalf of any party (for the purposes of this clause, the **payer**) to another (the **payee**) shall be paid free and clear of all deductions or withholdings save only as may be required by law.

(b) If any deduction or withholding is required by law to be made from any payment under any contract, the payer shall pay the payee such additional amount as will, after such deduction or withholding has been made, leave the payee with the same amount as it would have been entitled to receive in the absence of any such requirement to make a deduction or withholding.

(c) If any tax authority charges to tax any sum payable under any contract, the payer shall pay such additional amount as will ensure that the total amount paid, less the taxation chargeable on such total amount, is equal to the amount that would otherwise have been payable. Any such additional amount due shall be paid within ten business days of receipt of a written demand of the payee.

#### **LAW, JURISDICTION AND CONCILIATION**

36 Any dispute arising out of or in connection with this contract, including any question regarding its existence, validity or termination, shall be subject to the exclusive jurisdiction of the Courts of the Dubai International Financial Centre. This contract shall be governed by and construed in accordance with the laws of Dubai, United Arab Emirates.

#### **PART II - SERVICES PROVIDED BY THE COMPANY FOR CLEANING, MAINTENANCE OR REPAIR OF CONTAINERS OR STORAGE OF EMPTY CONTAINERS AND ANY SERVICES CONNECTED THEREWITH**

37 Subject to Clause 2 (b) above, if the Company provides services for Cleaning, maintenance or repair of Containers or storage of empty Containers and any services connected therewith, the Company shall not be liable for any improper performance or non-performance of such services, or any consequences whatsoever arising therefrom, except to the extent provided in this Part II.

38 (a) The Company's liability shall not exceed the reasonable cost of rectifying the services improperly or not performed by the Company, subject to a limit per Container of that Container's market value.

(b) At the Company's sole option, the Company may rectify at its own expense the services improperly or not performed. If the Company exercises this option, or is not given an opportunity by the Customer to exercise this option, the Company shall not be liable for any costs incurred by the Customer or any other Person in rectifying such services.

39 The Customer undertakes to inspect the Container on redelivery to the Customer or such other Person as is required. The Company shall not be liable and the Customer shall defend, indemnify and hold harmless the Company against any loss, damage, liability, cost and expense in respect of or arising from an improper or non-performance of the Company's services which would have been apparent upon reasonable inspection of the Container at the time of redelivery and was not brought to the Company's attention in writing at the time of redelivery. This indemnity is in addition to the indemnities in Part I of these Conditions.

40 The Company shall be discharged of all liability unless:

(i) notice of any claim is received by the Company in writing within 14 days, and

(ii) suit is brought in the proper form and written notice thereof received by the Company within 9 months after the date of redelivery of the Container to the Customer or such other person as is requested.