



# CANADIAN ALLIANCE TERMINALS INC. ("CAT") TERMS AND CONDITIONS

November 27 2018

The Customer's attention is drawn to the terms and conditions below that limit "CAT"'s liability as well as those that require the Customer to indemnify "CAT" in certain circumstances and emphasize the fact that "CAT" does not include insurance for Goods as part of its services unless Special Arrangements are made by the Customer with "CAT" in this regard.

## **PART I.**

### **"CAT" GENERAL TERMS AND CONDITIONS THAT APPLY TO ALL BUSINESS DONE OR SERVICES PERFORMED BY "CAT"**

#### **Definitions**

**"Agency Agreement and Power of Attorney"** means the Agency Agreement and Power of Attorney shown in Annex B of Part IV.

**"Article"** means an item of tangible personal property other than a fixture.

**"BL"** means a Bill of Lading or Waybill covering the carriage of Goods, and includes a Multimodal Transport Bill of Lading, a Straight Bill of Lading, a Straight Bill of Lading – Short Form, and a Shipper – Provided Short Form Bill of Lading, and whether it be in hard copy or transmitted electronically.

**"Canada Customs"** means the Canada Border Services Agency, any other Department or Agency, and any other successor Department or Agency of the Government of Canada or any Province thereof having jurisdiction over imports and exports.

**"Carrier"** means a Party, who whether on its own behalf or through an agent, signs a BL indicating it is the actual Carrier of the Goods.

**"Customer"** means any Party at whose request or on whose behalf "CAT" undertakes any business or provides advice, information or services.

**"Customs Broker"** means situations where "CAT" provides Services as outlined in Annex A of Part IV.



**"Customs Duties"** means any duties, taxes and levies on imported or exported Goods under the Customs Act, the Customs Tariff, the Excise Act, the Excise Tax Act, the Special Import Measures Act or any other laws, regulations or rules of Canada or any other country or jurisdiction, relating to customs, including any penalties, interest or fines imposed under any of the aforementioned laws, regulations or rules.

**"Dangerous Good(s)"** means Good(s) as statutorily defined in the appropriate Canadian Federal or Provincial legislation or regulations as dangerous Goods.

**"Depositor"** means the Party that actually deposits the Goods with "CAT" for warehouse storage.

**"Disbursement(s)"** means any payment made by "CAT", on behalf of the Customer, for or in relation to any product or service rendered in connection with the facilitation of the import and export of Goods, including, but not limited to, Customs Duties, taxes, freight, storage, penalties, interest and fines and any other payments, including payments for Goods on COD shipments made by "CAT" on behalf of the Customer.

**"Freight Forwarder"** means where "CAT" arranges for the carriage, transportation, storage, packing or handling of Goods or any other services in relation thereto, and without limiting the generality of the foregoing, any other actions or services contemplated by Sub-Clause 4(f), Clause 5 or Sub-Clause 8(a) of Part III.

**"Good(s)"** means the object(s) of the services provided hereunder and shall include any packing containers or equipment.

**"Instruction(s)"** means a statement of the Customer's specific requirements.

**"Owner"** means the owner of the Goods (including any packaging, containers or equipment) in relation to which any business is done or services are performed by "CAT".

**"Part"** means the Part (I to V) of these Terms and Conditions.

**"Party(ies)"** includes persons, parties, corporations, firms and associations.

**"Receipt"** means a warehouse receipt.





**“Related Party(ies)”** means “CAT”'s parent, any subsidiary of “CAT” or its parent, or any Party associated with or related to “CAT”, including any corporation that uses the word “CAT” in its name.

**“CAT”** means “CAT” of Canada Limited except where stated under the definition of "Related Party", "... any corporation that uses the word “CAT” in its name", where in this latter instance, the reference to “CAT” means any corporation that uses the word “CAT” in its name.

**“Special Arrangement(s)”** means arrangements made in accordance with express Instructions, in writing, that are both received and accepted by “CAT”.

**“Storage”** includes cross-dock, trailer-drop, transloading and other such storage services.

**“Storer”** or **“Warehouse”** mean the issuer of this Receipt, its employees, servants, successors and assigns;

**“Transport Unit(s)”** means containers, trailers, flats, tilts, railroad cars, tanks, igloos, or any other unit load device specifically constructed for the carriage or transportation of Goods by land, sea or air.

**“Warehouse Facility”** mean the warehouse premises of the Storer or Warehouse.

2. Application Part I of the Terms and Conditions apply to all business done or services performed by “CAT” for any Party, including that as described in Parts I to V inclusive of the Terms and Conditions, and whether or not such business done or services performed by “CAT” is described in Parts II to V of the Terms and Conditions.

3. Definitions The definitions used in this Part I apply to Parts I to V inclusive of “CAT”'s Terms and Conditions.

4. Headings of Clauses or groups of Clauses are for convenience of reference only.

5. “CAT”'s Lien In relation to all Goods and documents relating to the Goods which come into “CAT”'s possession or control, “CAT” shall have a particular lien and general right of detention upon each of the Goods and documents for all amounts owing to “CAT”, whether those amounts were incurred to “CAT” before, during or after the Goods or



documents came into "CAT"'s possession or control, or relate to other Goods or documents. If any amount due to "CAT" is not paid within one calendar month after notice has been given to the Party from whom the amount is due that such Goods are being detained, the Goods and the documents that relate to the Goods may be sold at public or private sale without advertising or in such other manner as deemed appropriate by "CAT", with such sale being at the expense of such Party that owes the amount to "CAT". The net proceeds of such sale may be applied in or towards satisfaction of the indebtedness to "CAT", and "CAT" will not be liable for any deficiencies or reduction in value received on the sale of the Goods and the Party responsible for the amount owing shall not be relieved from any liability, other than to the extent of the net proceeds realized from the sale, due to the sale of the Goods.

## 6. Insurance

(a) Rates do not include Insurance. No insurance will be affected by "CAT" except if the Customer makes Special Arrangements with "CAT". All insurance effected by "CAT" on behalf of the Customer under Special Arrangements is subject to the usual exceptions and conditions of the policies of the insurance company or underwriters taking the risk. "CAT" shall not be under any obligation to affect a separate insurance on any Goods but may declare the Goods on any open or general policy. Notwithstanding that the premium on the policy may not be the same as that charged by "CAT" to the Customer, "CAT" shall in no circumstances incur liability as insurer and if for any reason the insurers dispute liability, the Customer shall have recourse against the insurers only.

(b) "CAT" shall receive the benefit of any insurance policy that may have been effected on the Goods by the holder of the Receipt, the Depositor, the Customer, or the Owner of the Goods, including any payment received by the holder of the Receipt, the Depositor, Customer, or Owner of the Goods under any insurance policy, except in situations where for "CAT" to receive such benefit would invalidate the insurance coverage of the holder of the Receipt, the Depositor, Customer, or the Owner of the Goods.

7. Notice to "CAT" of Claims Any claim by the holder of the Receipt, the Depositor, Customer or Owner against "CAT", shall be made in writing or by fax and notified to "CAT" as soon as events which may give rise to a claim are known to the holder of the Receipt, Depositor, Customer or Owner of the Goods, and in any event:



- (i) in case of loss and/or damage to Goods within 45 days of such loss or damage,
- (ii) in case of delay in delivery or non-delivery within 45 days of the date when the Goods should have been delivered,
- (iii) in any other case, 3 days of the event giving rise to the claim.

Any claim not made and notified within the times provided for by Sub-Clauses (i)-(iii) above shall be deemed to be waived and absolutely barred except where the holder of the Receipt, Depositor, Customer or Owner can show that it was impossible for it to comply with these time limits, in which case any claim shall be barred if notice of such claim is not given to "CAT" without delay.

8. Time Bar for Bringing Legal Action against "CAT" "CAT" shall in any event be discharged of all liability unless a legal action is brought within 9 months from the date of any event or occurrence alleged to give rise to a cause of action against "CAT", whether or not such event or occurrence is known to the holder of the Receipt, the Depositor, the Customer or the Owner.

#### 9. Limits on "CAT"'s Liability and Others Associated with "CAT"

(a) "CAT" shall not be liable for consequential damages, including without limiting the generality of the foregoing, claims for loss of use, business interruption, loss of profits or revenue, interest, fixed or variable costs, loss of good will, work stoppage, impairment of other Goods, loss by reason of shut down or nonoperation, increased expenses of operation, or loss due to exchange rate fluctuations, increased levies or taxes by authorities.

(b) Except where "CAT" acts as Carrier and Part V of the Terms and Conditions apply, the total liability of "CAT" to the holder of the Receipt, the Depositor, Customer, or Owner arising out of any particular event that gives rise to any loss or damage, shall not exceed \$45,000 Canadian ("CAT"'s Total Cap of Its Liability"). In the event of delay of, damage to or loss or destruction of Goods where either the declared or depreciated value of the Goods that are delayed, damaged, lost or destroyed is less than \$45,000 Canadian, "CAT"'s Total Cap of Its Liability in relation to the holder of the Receipt, the Depositor, Customer or Owner, shall be reduced from \$45,000 Canadian to the lesser of the declared value or the depreciated value of the Goods that are delayed, damaged, lost or destroyed. Loss or





damage caused by continuous or repeated exposure to, or occurrence of, the same, or substantially the same, general conditions, acts, or omissions, shall collectively be deemed to constitute a single event and in relation to which the total liability of "CAT" shall not exceed \$45,000 Canadian.

(c) Except under Special Arrangements, advice and information that is not related to Instructions accepted by "CAT", is provided gratuitously. Any services provided gratuitously by "CAT", are provided by "CAT" without liability.

(d) "CAT" shall be relieved of liability for any loss or damage if such loss or damage was caused by an act or omission of the holder of the Receipt, Depositor Customer, Owner, or Party other than "CAT", including by an act or omission of a Related Party.

(e) Claims against "CAT" based upon a claim in bailment or the laws of bailment are specifically excluded.

(f) All exclusions or limitations of liability apply whether the claim against "CAT" is based upon a claim in warranty, statute, contract, tort (including negligence and strict liability), bailment, or any other cause of action.

(g) Whenever the liability of "CAT" is excluded or limited under the Terms and Conditions, such exclusion or limitation, as well as time limits for the bringing of actions and provisions pertaining to notice of actions or benefits of any insurance policy effected by the Customer or Owner, shall apply to claims made against a Related Party, as well as those made against directors, officers, employees, agents or representatives of "CAT" or a Related Party.

(h) Part of the consideration for the rates offered by "CAT" and any Related Party, is the limitations and exclusion of liability as stated in this Agreement. The Customer agrees and acknowledges that the rates are dependent upon this limitation.

#### 10. Customer Has No Right of Set-Off

The Customer shall pay to "CAT" immediately all amounts owing when due in accordance with the "CAT" invoice sent to the Customer, without reduction or deferment on account of any claim, counterclaim or set off the Customer has or may have in relation to "CAT".



11. "CAT"'s Right to Terminate Provision of Its Services Without in any way negating or diminishing "CAT"'s Lien under Section 3 hereof, "CAT" shall have the right to immediately terminate without notice any and all services it is providing to the Customer in the event of any of the following occurring:

(a) The Customer failing to pay any invoice received from "CAT" within 14 days of receipt of such invoice by the Customer, and whether such invoice is transmitted to the Customer in hard copy or electronically;

(b) Insolvency of the Customer;

(c) Initiation of any proceedings in bankruptcy by or against the Customer, whether such proceedings be under the Bankruptcy and Insolvency Act of Canada or similar legislation of any other jurisdiction;

(d) Initiation of any proceedings by or against the Customer under the Companies' Creditors Arrangement Act of Canada, similar legislation of other jurisdictions, or legislation of other jurisdictions whereby the Customer is doing or would do some form of business re-organization, including but not limited to situations where the Customer is insolvent; or

(e) Any assignment by the Customer for the benefit of creditors

12. National or International Sanction List for Denied Parties the Customer is not involved with any Party listed on any national or international sanction list for denied parties.

13. Severability Each of the clauses of the Terms and Conditions is and shall be deemed to be separate and severable, and if any provision or part of the Terms and Conditions is held for any reason to be unenforceable, the remainder of the Terms and Conditions or part thereof shall remain in full force and effect.

14. Jurisdiction and Law

(a) When "CAT" acts as a Warehouseman, the terms and conditions of the contract with "CAT" and any claims against "CAT" arising from it acting as a Warehouseman, shall be exclusively governed by and dealt with through the laws and courts of the Province of



British Columbia in which the warehouse facility of "CAT" used for the storage of the Goods is located.

(b) When "CAT" acts as a Carrier, the terms and conditions of the contract with "CAT" and any claims against "CAT" arising from it acting as a Carrier, shall be exclusively governed by and dealt with through the law and courts as stated on any BL "CAT" signs as Carrier. To the extent any BL that "CAT" signs as Carrier does not deal with the issues of the jurisdiction for the bringing of claims against "CAT" and applicable law, the terms and conditions of the contract with "CAT" and any claims against "CAT" shall be governed by Sub-Clause (c).

(c) The terms and conditions of the contract with "CAT" not falling within Subclause (a) or (b), shall be exclusively governed by and dealt with through the law and courts of the Province of Canada in which the office of "CAT" through whom the Customer has dealt with directly pertaining to any particular transaction(s) that is (are) the subject matter of a claim or action, is located. In the event the Customer has dealt with directly more than one office of "CAT" pertaining to any particular transaction(s) that is (are) the subject matter of a claim or action, the laws and courts of the Province of Canada in which the office of "CAT" is located that dealt to the greatest degree with the particular transaction(s) that is (are) the subject matter of the claim or action, shall govern the terms and conditions of the contract with "CAT" and shall deal with the claim or action.

## **PART II.**

### **ADDITIONAL TERMS AND CONDITIONS THAT APPLY WHEN "CAT" ACTS AS WAREHOUSMAN**

#### CONTRACT – Sec. 1

Subject always to legislation in force governing warehouse receipts in the province where the Goods are stored, this Receipt including the Terms and Conditions hereinafter set out and rates and charges that may be attached hereto, when delivered or mailed to the Depositor of the Goods at its address last known to the Storer or Warehouse, shall constitute the contract between the Depositor and the Storer or Warehouse; provided that the Depositor may within 20 days after such delivery or mailing, notify the Storer or









#### BASIS OF CHARGES – Sec. 4

Any charge made with respect to the Goods shall conform to the Storer's or Warehouse's rates and charges that may be attached hereto or quotation and/or tariff in effect at the time the service is performed.

#### ACCESS AND INSPECTION – Sec. 5

The Depositor may, subject to the Storer's or Warehouse's security and insurance regulations and other reasonable limitations, have access to the Goods at any reasonable time, provided at least 48 hours written notice is given in advance to the Storer or Warehouse and provided the Depositor or its authorized representative is accompanied by an employee of the Storer or Warehouse, whose time shall be an additional charge to the Depositor.

#### DANGEROUS GOODS – Sec. 6

It is the Depositor's responsibility to provide the Storer or Warehouse in advance with detailed, written information and instructions on any of its Articles that may be considered hazardous, whether or not they are regulated under the *Transportation of Dangerous Goods Act* or other applicable legislation. If the Depositor fails to do so, the Storer or Warehouse shall have the right to refuse to accept such Articles when tendered for storage or other services and shall not be liable for any loss, mis consignment or damage of any nature to such Articles. The Depositor warrants that the Goods, the packaging and marking thereof comply in all respects with the provisions of any federal or provincial legislation or regulations governing the handling or storage of dangerous goods. The Depositor assumes all liability for costs incurred and/or damages resulting from Depositor's failure to do so. The Depositor shall indemnify, defend and hold the Storer or Warehouse (including its officers, directors, parent and affiliated companies, employees, servants and agents) harmless from and against any loss, liability, damage, penalty, demand, expense, claim of whatever type or nature by or on behalf of any person, including but not limited to damage or destruction of property or injury (including death) to any person, arising out of the Goods being stored at the Warehouse Facility or tendered for transportation or handled by third parties retained by the Storer or Warehouse.



#### REMOVAL OF GOODS – Sec. 7

No Article that is or may become of a dangerous, explosive, inflammable, radioactive, hazardous, biohazardous, cytotoxic or environmentally damaging nature that, in the opinion of the Storer or Warehouse, may create a condition hazardous to any personnel or Articles in the Warehouse Facility or to the Warehouse Facility itself shall be delivered to the Warehouse Facility, except where the Depositor has obtained the prior written approval of the Storer or Warehouse. Any such Article may, upon being discovered, be destroyed, dumped, sold or otherwise disposed of as the Storer or Warehouse reasonably sees fit, the whole at the risk and expense of the Depositor and without liability on the part of the Storer or Warehouse. The Storer or Warehouse shall have the right to require the removal from its Warehouse Facility of any other Articles of any kind or description, at any time, without stated reasons, upon written notice of not less than 30 days from the end of the current storage month.

#### LIABILITY OF STORER OR WAREHOUSE – Sec. 8

- (a) The responsibility of the Storer or Warehouse is the reasonable care and diligence required by the laws of the province where the Goods are stored; provided that all Goods are stored at the Depositor's risk of loss, damage or delay in delivery unless the Depositor establishes such loss, damage or delay occurred because of the Storer's or Warehouse's failure to exercise the care required by the laws of the province where the Goods are stored.
- (b) The quality, condition, contents and value of the Goods are not known to the Storer or Warehouse except as declared by the Depositor and described on the face of the Receipt.
- (c) Goods covered by this Receipt are not insured by the Storer or Warehouse.
- (d) Without limiting the generality of the foregoing, it is specifically declared that:
  - I. All Goods are stored at the owner's risk of loss, damage or delay in the delivery caused by or through inaccuracies, obliteration or absence of marks, numbers, address or description, act of God, irresistible force, enemies of the Queen, civil or military authorities, insurrection, riot, strikes, terrorist acts, picketing or any other labour trouble, water, steam, sprinkler leakage, floods, rain, wind, storm, fire, frost,



vermin, heating or corruption, deterioration, drainage, dampness, rust, decay, collapse of the building, inevitable accident, depreciation or perishing by a lapse of time, changes in temperature, interruption or loss of power, contact with or odors from other Articles, inherent defects, lack of any special care or precaution, injury to Articles insufficiently protected or arising from the nature of the Goods, loss in weight, insufficient cooperage, boxing, crating or packing, ordinary wear and tear in handling, leakage, concealed damage or any cause beyond the control of the Storer or Warehouse or failure to detect any of the foregoing. All storage and other applicable charges must be paid on Goods stored for an additional time, or lost or damaged by any of the above causes.

II. The legal liability of the Storer or Warehouse shall be strictly limited to the lesser of the monetary amount of the damage incurred or 100 times the monthly storage rate on any one package or stored unit with the contents (or, in cases where the Storer's or Warehouse's charges are calculated for other than actual storage, maximum \$50.00 per unit) unless the Depositor specifically requests a higher limit in writing and declares an excess value, in which case the Storer or Warehouse may, at its option, accept liability and assess an additional charge to the monthly storage or other applicable rate.

(e) Where loss, damage or destruction occurs to the Goods, for which the Storer or Warehouse is not liable, the Depositor shall be responsible for the cost of removing and disposing of such Goods and the cost of any environmental cleanup and site remediation resulting from the loss, damage or destruction to the Goods.

(f) The Storer or Warehouse shall not, in any event, be liable for any claim of any type whatsoever with respect to the Goods unless such claim is presented in writing within a reasonable time, not exceeding 30 days after the Depositor learns of, or, in the exercise of reasonable care, should have learned of the loss, damage or destruction of the Goods.

#### GENERAL – Sec. 9

(a) All incoming shipments must be consigned to the Depositor, c/o the Storer or Warehouse, freight prepaid. The Storer or Warehouse reserves the right to refuse



acceptance of any Articles improperly consigned or shipped freight collect and shall not be liable or responsible for any loss, injury or damage of any nature to or related to such Articles.

- (b) If a checker is not furnished by the Depositor or transportation company delivering the Goods to the Warehouse Facility, the Storer's or Warehouse's load or unload count shall be conclusively deemed to be correct.
- (c) The Storer or Warehouse shall have no responsibility for errors resulting from the corruption of electronically transmitted data, or from verbal or telephoned shipping instructions, unless written confirmation of such instructions is received not less than twenty-four hours prior to the shipment of the Goods.
- (d) When errors in shipment occur, any liability of the Storer or Warehouse shall be strictly limited to the transportation costs involved to rectify any such error, and shall not, under any circumstances, include liability for loss or damages due to the acceptance or use of the Goods.
- (e) The Storer or Warehouse shall not be responsible for delays in loading or unloading railway cars, trailers or other containers, nor for demurrage charges or other time penalties arising from any delay at the Warehouse Facility, which cannot reasonably be avoided by the Storer or Warehouse in the normal course of its business.
- (f) A charge, in addition to regular rates, will be made for merchandise in bond pursuant to the Customs Bonded and Sufferance Warehouse Regulations of the Government of Canada.
- (g)** Storer or Warehouse shall not be liable for loss of Goods due to inventory shortage or unexplained or mysterious disappearance of Goods unless Depositor establishes such loss occurred because of Storer's or Warehouse's failure to exercise the care required of Storer or Warehouse under Section 9 above. Notwithstanding the foregoing, Depositor acknowledges and agrees to accept a damage and inventory shrinkage allowance of .074% of annual throughput pieces (Receipts + Shipments)/2.
- (h) Depositor represents and warrants that it is lawfully possessed of the Goods and has the right and authority to store them with the Storer or Warehouse. Depositor agrees to indemnify and hold harmless the Storer or Warehouse from all loss, cost and



expense (including reasonable lawyers' fees) which Storer or Warehouse pays or incurs as a result of any dispute or litigation, whether instituted by Storer or Warehouse or others, respecting Depositor's right, title or interest in the Goods. Such amounts shall be charges in relation to the Goods and subject to Storer's or Warehouse's lien.

- (i) Storer or Warehouse shall not be liable for any loss of profit or special, indirect, or consequential damages of any kind.
- (j) If any provision of this Receipt, or any application thereof, should be construed or held to be void, invalid or unenforceable, by order, decree or judgment of a court of competent jurisdiction the remaining provisions of this Receipt shall not be affected thereby but shall remain in full force and effect. Storer's or Warehouse's failure to require strict compliance with any provision of the Receipt shall not constitute a waiver or estoppel to later demand strict compliance with that or any other provisions of this Receipt. The provisions of this Receipt shall be binding upon the Depositor's heirs, executors, successors and assigns and cannot be modified except in writing signed by Storer or Warehouse.
- (k) The Parties agree that these Terms and Conditions shall be governed by the law of the Province within Canada in which the Warehouse Facility is located. By accepting the services provided under these Terms and Conditions, the Depositor irrevocably attorns to the exclusive jurisdiction of the Courts of that Province.
- (l) Documents, including this Receipt, may be issued either in physical or electronic form at the option of the Parties.
- (m) Unless specified otherwise, all statements of or references to dollar amounts in these Terms and Conditions are to lawful money of Canada.

**PART III. ADDITIONAL TERMS AND CONDITIONS THAT APPLY WHEN "CAT" ACTS AS FREIGHT FORWARDER**

1. "CAT"'s Contract as Freight Forwarder Parts I and III of the Terms and Conditions shall constitute the contract between the Customer and "CAT" acting as Freight Forwarder.



2. Non-Applicability of Part III if "CAT" Acts as the Actual Carrier "CAT" may in respect of all or any part or parts of any contract for the movement of Goods, sign a BL that shows "CAT" is the actual Carrier. Where this occurs, Parts I and V of "CAT" Terms and Conditions apply, and not this Part III, to that part of the transportation of the Goods, and only that part of the transportation of the Goods, covered by the BL signed by "CAT" as the actual Carrier. Prior to and after that part of the transportation of the Goods covered by the BL signed by "CAT" as the actual Carrier, Parts I and III shall constitute the contract between "CAT" and the Customer.

3. "CAT"'s General Responsibilities (a) Subject to the limitations contained in Parts I and III of the Terms and Conditions, "CAT" shall perform its duties as Freight Forwarder with reasonable care.

(b) Subject to Sub-Clause 6(a) hereof, "CAT" shall carry out its services within a reasonable time.

(c) Subject to the limitations contained in the Terms and Conditions and the discretion reserved to "CAT" in the Terms and Conditions, "CAT" shall take all reasonable steps to perform any of the Customer's Instructions accepted by "CAT".

(d) If at any stage in any transaction, "CAT" should reasonably consider that there is good reason in the Customer's interests to depart from any of the Customer's Instructions, "CAT" shall be permitted to do so and shall not incur any additional liability in consequence of so doing.

(e) If after a contract has been agreed, events or circumstances come to the attention of "CAT" which in the opinion of "CAT" make it wholly or in part impossible for "CAT" to fulfill its duties, it shall take reasonable steps to inform the Customer of such events or circumstances and seek further Instructions.

(f) Quotations are given on the basis of immediate acceptance and are subject to withdrawal or revision. Unless otherwise agreed in writing, "CAT" shall be, after acceptance, at liberty to revise quotations or charges with or without notice in the event of changes outside "CAT"'s control, including changes occurring in schedules, points of departure, currency exchange rates, rates of freight, insurance premiums or any charges applicable to the Goods.



#### 4. The Customer's Undertakings

(a) The Customer shall be deemed to be competent and to have reasonable knowledge of matters affecting the conduct of their business, including terms of sale and purchase and all other matters relating thereto.

(b) The Customer shall give sufficient and executable Instructions and assumes full responsibility for the accuracy of all Instructions and information provided by it to "CAT";

(c) The Customer warrants that it is either the Owner or the authorized agent of the Owner and also that it is accepting these Conditions not only for itself but also as agent for and on behalf of the Owner.

(d) The Customer warrants that the description and particulars of any Goods furnished by or on behalf of the Customer are full and accurate.

(e) When Goods are accepted or dealt with upon Instructions to collect freight, duties, taxes, charges or other expenses from the consignee or any other person, the Customer shall remain responsible for these amounts if they are not paid by such consignee or other person immediately when due.

(f) It is agreed that "CAT" does, and shall be deemed to, contract as agent for the Customer pertaining to contracts entered into with any other Party, including any contracts entered into with a Related Party.

(g) The Customer shall indemnify "CAT" against all duties, taxes, payments, fines, expenses, losses, damages (including physical damage) and liabilities in excess of the liability of "CAT" in accordance with the Terms and Conditions, suffered or incurred by "CAT" in the performance of its obligations under any contract to which the Terms and Conditions apply

(h) The Customer shall warn "CAT" if any Goods which are the subject of any transaction to which the Terms and Conditions apply are liable to taint or affect other Goods, or are likely to harbour or encourage vermin, rodents, insects or other pests, and the Customer shall indemnify "CAT" against any liability, loss, damage, costs or expenses incurred by "CAT" as a consequence of the Customer's failure to do so or for failure to do so in a timely fashion.





- (i) The Customer warrants that all Goods have been properly and sufficiently prepared, packed, stowed, labeled and/or marked, and that the preparation, packing, stowage, labeling and marking are appropriate to any operations or transactions affecting the Goods and the characteristics of the Goods.
- (j) Where the Goods are carried in or on any Transport Unit, the Customer warrants:
  - (i) that the Transport Unit has been properly and competently loaded;
  - (ii) that the Goods are suitable for carriage in or on the Transport Unit; and
  - (iii) that the Transport Unit is in a suitable condition to carry the Goods loaded therein.
- (k) The Customer shall indemnify "CAT" in respect of any claims of a general average nature which may be made on it and shall provide such security as may be required by "CAT" in this connection.

#### 5. "CAT"'s Role as Freight Forwarder

(a) "CAT" does not make any contract with the Customer for the carriage, transportation, storage, packing or handling of any Goods nor for any other physical service in relation to any Goods and acts solely as agent 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. For greater clarity, "CAT" acts solely as agent on behalf of the Customer in any situation where "CAT" contracts with any Related Party. "CAT" acts solely as agent on behalf of the Customer in any situation where a BL is signed by or on behalf of another Party, including a Related Party, as Carrier, including in any situation where "CAT" signs the BL on behalf of another Party, including a Related Party.

(b) Without limiting the generality of the foregoing, "CAT" at all times shall be deemed to be acting as agent for the Customer in any case where "CAT" enters into a contract with any other Party for the carriage, transportation, storage, packing or handling of Goods or for any other services in relation thereto. Subject to any applicable laws, such contract is capable of being enforced by the Customer or Owner as principal whether or not the Customer or Owner is named or disclosed as principal by "CAT".

#### 6. "CAT"'s General Conditions as a Freight Forwarder



- (a) "CAT" is not responsible for departure or arrival dates of Goods.
- (b) If delivery of the Goods or any part thereof is not taken by the Customer, consignee or Owner, at the time and place when and where "CAT" is entitled to call upon such person to take delivery thereof, "CAT" shall be entitled to store the Goods or any part thereof at the sole risk of the Customer, whereupon the liability of "CAT" in respect of the Goods or that part thereof so stored shall wholly cease and the cost of such storage if paid for or payable by "CAT" or any Party with whom "CAT" deals, shall immediately upon demand be paid by the Customer to "CAT".
- (c) "CAT" shall be entitled at the expense of the Customer to dispose of (by sale or otherwise as may be reasonable in all the circumstances)
- I. on 21 days notice in writing to the Customer, or where the Customer cannot be traced and reasonable efforts have been made to contact any Parties who may reasonably be thought by "CAT" to have any interest in the Goods, any Goods which have been held by "CAT" for 90 days and which cannot be delivered as instructed; and
  - II. without prior notice, Goods which have perished, deteriorated or altered or are in immediate prospect of doing so in a manner which has caused or may reasonably be expected to cause loss or damage to third Parties, other Goods, or to contravene any applicable laws or regulations.
  - III. In acting under Sub-Clauses (i) and (ii), "CAT" shall give appropriate credit to the Customer for any balance arising out of the proceeds of sale of the Goods after deduction of "CAT"'s costs of sale.
- (d) Except insofar as may be required to comply with the Customer's Instructions, "CAT" shall not be obliged to arrange for the Goods to be carried stored or handled separately from other Goods.
- (e) Except in accordance with Special Arrangements with the Customer, "CAT" shall not be obliged to make any Declaration for the purpose of any statute, convention or contract as to the nature or value of any Goods or as to any special interest in delivery.



(f) Except under Special Arrangements or under the terms of a printed document signed by "CAT", any Instructions of the Customer 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 "CAT" only as agent for the Customer.

(g) Despite the acceptance by "CAT" of Instructions to collect freight, duties, charges or other expenses from the consignee or any other person, the Customer shall remain responsible for all such freight duties, charges or other expenses in the event they are not paid, no matter what the reason is for such non-payment.

#### 7. "CAT"'s Special Conditions Relating to Particular Goods

(a) The Customer undertakes not to tender for transportation any Dangerous Goods, including but not limiting the generality of the foregoing, any Goods that are of a dangerous, flammable, radio-active, hazardous or damaging nature, except under Special Arrangements. If any such Goods, including Dangerous Goods are accepted by "CAT" under Special Arrangements, Customer undertakes to mark any such Goods and the outside of any packages or container in which they may be placed, as required by any laws or regulations which may be applicable during the carriage. Customer further warrants that any such Goods, the transportation thereof as requested by the Customer, as well as the packaging and marking thereof, comply in all respects with the provisions of the Transportation of Dangerous Goods Act, 1992 (or any similar or successor legislation) of the Parliament of Canada, similar legislation of any province or other applicable jurisdiction, as well as any regulations passed under such legislation.

(b) If "CAT" agrees to accept under Special Arrangements, Dangerous Goods or any other Goods mentioned or described under Sub-Clause (a), Customer agrees to indemnify and save harmless "CAT" in relation to any claims made against "CAT" or costs incurred by "CAT" which in any way arise out of or are related to such Goods, including all civil claims, fines, penalties, other levies imposed against "CAT", and "CAT"'s legal costs and disbursements on a solicitor and his own client basis.

(c) Goods, which in the opinion of "CAT" or the Party who has custody or possession thereof, are, or at any time hereafter, become dangerous and present a hazard, may at



any time or place be unloaded, destroyed or rendered harmless without compensation, and if the Customer has not given notice of their nature to "CAT" under Sub-Clause (a) above, "CAT" shall be under no liability to make any general average contribution in respect of such Goods.

(d) Except under Special Arrangements, "CAT" will not accept or deal with bank notes, bonds, negotiable instruments or securities of any kind, bullion, coin, precious stones, jewelry, valuables, antiques, pictures, human remains, livestock or plants. Should any Customer nevertheless deliver any such Goods to "CAT" or cause "CAT" to handle or deal with any such Goods otherwise than under Special Arrangements, "CAT" shall be under no liability whatsoever for or in connection with such Goods howsoever arising.

(e) "CAT" may at any time in writing waive its rights and exemptions from liability under Sub-Clause (d) above in respect of any one or more of the categories of Goods mentioned herein or of any part of any category. Such waiver shall not be effective unless it is in writing signed by "CAT"

#### 8. Express Authorization Of "CAT" As Agent for The Customer

(a) "CAT" shall be entitled and the Customer hereby expressly authorizes "CAT", to enter into contracts on behalf of the Customer, including without limiting the generality of the foregoing, with any Related Party:

- I. for the carriage or transportation of Goods by any route or means;
- II. for the storage, packing, trans-shipment, loading, unloading or handling of the Goods by any Party or at any place, and for any length of time,
- III. for the carriage, transportation or storage of Goods in or on Transport Units or with other Goods of whatever nature.

(b) For greater certainty, in relation to any contracts entered into under Sub-Clause 4(f), Clause 5 or Sub-Clause 8(a), or any other contract entered into through "CAT"'s role as Freight Forwarder, it is agreed that "CAT" does enter such contracts, and shall be deemed to have entered such contracts, as agent for the Customer.

(c) In any situation where "CAT" contracts with any Party, including any Related Party, the terms and conditions of contract of such other Party, including any Related Party, shall be





the terms and conditions of the contract between the Customer and such other Party, including a Related Party, whether contained on the back of a BL or otherwise.

(d) Where there is a choice of rates according to the extent or degree of the liability assumed by Carriers, "CAT", or others, no declaration of value where optional can be made except under Special Arrangements.

(e) "CAT" shall have no liability to the Customer by reason of having entered into any contract on behalf of the Customer whereby the extent or degree of the liability assumed by a Carrier or other Party, including a Related Party, is in any respect excluded or limited, except where such contract is entered into contrary to written specific Instructions given by the Customer that were accepted by "CAT" in writing.

#### **PART IV. ADDITIONAL TERMS AND CONDITIONS THAT APPLY WHEN "CAT" ACTS AS CARRIER**

1. "CAT"'s Contract as Carrier Parts I and IV of the Terms and Conditions shall constitute the contract between Owner or Customer and "CAT" in any situation where "CAT" acts as the Carrier for the Goods.

2. The Only Situations Where "CAT" Shall be Considered to be the Carrier of Goods "CAT" shall only be held, considered or deemed to be the Carrier of Goods in those situations where "CAT" signs the BL indicating it is the actual Carrier of the Goods. For greater clarity, "CAT" shall not be held, considered or deemed to be the Carrier of the Goods in any situations where "CAT" signs the BL on behalf of another Party as Carrier, including on behalf of a Related Party.

3. Additional Liability Limit of "CAT" as Carrier

(a) Subject to the limitations stated in Parts I and V of the Terms and Conditions, the responsibility of "CAT" is to show reasonable care in relation to its acting as a Carrier.

(b) The quality, condition, contents and value of Goods stored are not known to "CAT" except as declared and described by the Customer or Owner to "CAT".

(c) "CAT" is not responsible for packing containers and equipment used to protect goods in the normal rigors of transportation. "CAT" is not responsible for damage to Goods caused by condensation or build up of moisture within any packing containers.



(d) In situations where “CAT” acts as a Carrier by signing as Carrier a BL in relation to transportation of Goods by air within the United States, “CAT”'s liability to the Customer shall be limited to the lesser of: (a) the value of the Goods at the place and time of shipment, including the freight and other charges if paid; or (b) \$2.00 CAD per pound of weight for the particular Good or Goods that have been lost, damaged, destroyed or delayed.

(e) From time to time “CAT” acts as a Carrier by signing as Carrier a BL pertaining to ground transportation. In any such situation, the liability of “CAT” when acting as a Carrier shall be limited to the lesser of: (a) the value of the Goods at the place and time of shipment, including the freight and other charges if paid; or (b) \$2.00 CAD per pound of weight for the particular Good or Goods that have been lost, damaged, destroyed or delayed.

(f) In all situations not governed by or dealt with in Sub-Clauses 3(d) to (e) inclusive above, the liability of “CAT” when acting as a Carrier shall be limited to the lesser of: (a) the value of the Goods at the place and time of shipment, including the freight and other charges if paid; or (b) \$2.00 CAD per pound of weight for the particular Good or Goods that have been lost, damaged, destroyed or delayed.

(g) In all such situations where “CAT” acts as a Carrier by signing as Carrier a BL in relation to the transportation of Goods, the terms of the contract between “CAT” and the Customer pertaining to all transportation of the Goods prior to and after that covered by the particular BL, shall be governed by the terms and conditions as stated in Parts I and III (why part III acting as a Freight forwarder and not part IV acting as a carrier) of the Terms and Conditions.

(m) Customer agrees to indemnify and save harmless “CAT” and any Related Party for any claim that the Customer or the Owner of the Goods may make against “CAT” or any Related Party which is in excess of the amounts stated in Sub- Clauses 3(d) to (e) inclusive above as well as any claims that are excluded or limited by virtue of Clause 9 of Part I of the Terms and Conditions.