



**VISY GLOBAL LOGISTICS (USA) TERMS AND CONDITIONS FOR GLOBAL
FORWARDING AND LOGISTICS**

PART 1: GENERAL CONDITIONS

Application

1. (a) Subject to sub-clause (b) below, all services of the Company whether gratuitous or not are subject to these Terms and Conditions. The provisions of Part I shall apply to all such services. The provisions of Part II shall only apply to the extent that such services are provided by the Company as an agent. The provisions of Part III shall only apply to the extent that such services are provided by the Company as a principal.
- (b) Where a document bearing a title of or including "bill of lading" (whether or not negotiable), or "waybill" is issued by or on behalf of the Company and provides that the Company contracts as carrier, the provisions set out in such document shall be paramount in so far as such provisions are inconsistent with these Conditions.
- (c) Every variation, cancellation or waiver of these Conditions must be in writing signed by a Director of the Company. Notice is hereby given that no other person has or will be given any authority whatsoever to agree to any variation, cancellation or waiver of these Conditions.
2. All services are provided by the Company as agents except in the following circumstances where the company acts as principal:
 - (a) where the Company performs any carriage, handling or storage of Goods but only to the extent that the carriage is performed by the Company and the Goods are in the actual custody and control of the Company; or
 - (b) where prior to the commencement of the carriage, handling or storage of Goods the Customer in writing demands from the Company particulars of the identity, services or charges of persons instructed by the Company to perform part or all of the aforementioned services, the Company shall be deemed to be contracting as a principal in respect of that part of the carriage, handling and/or storage in respect of which the Company fails to give such particulars demanded within 28 days of the Company's receipt of such demand; or
 - (c) to the extent that the Company expressly agrees to act as a principal (subject to clause 1(c)); or
 - (d) to the extent that the Company is held by a court of law to have acted as a principal.
3. Without prejudice to the generality of clause 2:
 - (a) the charging by the Company of a fixed price for a service or services of whatsoever nature shall not in itself determine or be evidence that the Company is acting as an agent or a principal in respect of such service or services;
 - (b) the supplying by the Company of their own or leased equipment shall not in itself determine or be evidence that the Company is acting as an agent or a principal in respect of any carriage, handling or storage of Goods;
 - (c) the Company acts as an agent where the Company procures a bill of lading or other document evidencing a contract of carriage between a person, other than the Company, and the Customer or Owner;
 - (d) the Company acts as an agent and never as a principal when providing services in respect of or relating to customs requirements, taxes, licenses, consular documents, certificates or origin, inspection, certificates and other similar services.

Definitions

4. In these conditions
 - "Authority" means any customs authority, customs inspection stations, port and harbour authorities, authorities regulating the carriage of goods by road or rail, and any other authorities having legal jurisdiction over any aspect of the Goods or the services that are provided to the Customer or the Owner.
 - "Charges" is defined in clause 23(a).
 - "Company" means Visy West Coast Pty Limited trading as Visy Global Logistics (USA).
 - "Consequential Loss" means remote or indirect loss and loss that was not reasonably foreseeable, including without limitation deferment of income, loss of profit or revenue, loss of denial of opportunity, loss of access to markets, loss of goodwill, loss of business reputation, damage to credit rating, punitive, consequential or special damages.
 - "Container" includes any container, flexitank, trailer, transportable tank, flat, pallet or any article of transport used to carry or consolidate goods and any equipment of or connected thereto.
 - "Credit Application" is the document provided to a Customer before any services are provided to the Customer by any Visy Entity.

“Customer”	means any person at whose request or on whose behalf the Company provides a service including, but not limited to, a person identified as a Customer in a Credit Application.
“Dangerous Goods”	means any Goods which are or which may become dangerous, volatile, explosive, inflammable, radioactive or hazardous, or which may become harmful to any person, property or the environment. whatsoever.
“Goods”	includes the goods and any Container supplied by the Customer, in respect of which the company provides a service.
“Instruction”	means any instruction received from the Customer or an agent of the Customer concerning specific aspects of the carriage, handling or storage of the Goods and/or any other services to be provided to the Customer or the Owner.
“Invoice”	is defined in clause 23(b).
“Owner”	includes the owner, shipper, buyer and consignee of the Goods and any other person who is or may become interested in the Goods and anyone acting on their behalf.
“person”	includes persons or any body or bodies corporate.
“SOLAS Convention”	means the iteration of the International Convention for the Safety of Life at Sea international maritime treaty existing at the commencement of the services provided in relation to the Goods.
“Transport Document”	means any transport document of whatever nature including without limitation a bill of lading (whether negotiable or non-negotiable), sea waybill, air waybill, consignment note, manifest, shipping receipt, warehouse receipt, gate pass, proof of delivery, or other document whether electronic data or in hard copy form relating to the carriage, handling or storage of Goods.
“VGM”	is the weight of cargo including dunnage and bracing plus the tare weight of the container carrying this cargo, as calculated by the Customer (unless otherwise agreed in writing) in accordance with the methods prescribed in the SOLAS Convention.
“Visy Entity”	means any of the following: Visy Logistics Pty Ltd, Visy Global Logistics (NZ) Ltd and Visy West Coast Pty Ltd.
“Weight Declaration”	means a declaration provided by the Customer to the Company regarding the weight of Goods (including, but not limited to, a VGM declaration).

Customer's Instructions

5. The Company is not required to comply with any Instruction unless the Instruction is received by the Company in writing, acknowledged by the Company in writing and given in sufficient time in all the circumstances for the Company reasonably to be able to comply with the instructions. Standing or general instructions, or instructions given late, even if received by the Company without comment, shall not be binding upon the Company. If the Company adopts standing or general instructions, or instructions given late, for one or more transaction for the Customer or any other party, that does not in any way affect the validity of those instructions in relation to any past and future transaction. No attempt by the Company to adopt late instructions will constitute an acceptance by the Company or affect the validity of those instructions.

Customer's warranties

6. The Customer warrants that:
- it is either the Owner or the authorised agent of the Owner or the party that is entitled to lawful possession of the Goods, and that it is authorised to accept these Terms and Conditions not only for itself but also as agent for and on behalf of the Owner or the person that is entitled to lawful possession of the Goods;
 - the description and particulars of the Goods (including but not limited to the VGM) made available to the Company by or on behalf of the Customer are complete and correct;
 - the Goods are properly packed and labelled (having due regard to the nature of the Goods), except to the extent that the Company has agreed to pack or label the Goods.

Dangerous goods

7. (a) Unless otherwise agreed in writing, the Customer shall not deliver to the Company or cause the Company or any other person appointed by the Company (in its capacity as agent for the Customer or otherwise) to deal with or handle Dangerous Goods.
- (b) If the Customer is in breach of clause 7(a) above it shall defend, indemnify and hold harmless the Company against all penalties, liability, claims, damages, costs and expenses arising out of or in connection with the breach, and the Goods may without notice be destroyed or otherwise dealt with at the sole discretion of the Company or any other person in whose custody they may be at the relevant time.
- (c) If the Company agrees to accept Dangerous Goods and then in the reasonable opinion of the Company or any other person they constitute a risk to other goods, property, life or health they may without notice be destroyed or otherwise dealt with at the expense of the Customer or Owner.

Goods that are susceptible to temperature abuse, perishable or incapable of being delivered

8. (a) The Customer shall not:
- request the Company to provide any services in relation to any Goods which require temperature control without also providing in a timely manner the temperature settings to be maintained;

- (ii) in the case of a temperature controlled Container stuffed by or on behalf of the Customer, deliver the Container, or cause it to be delivered, to the Company or any person appointed by the Company, unless the Container has been properly pre-cooled or preheated as appropriate, the Goods have been properly stuffed in the Container and the thermostatic controls of the Container have been properly set by the Customer.

If the Customer fails to comply with any of the requirements in this clause 8(a), the Company shall not be liable for any loss of or damage to the Goods caused by such non-compliance and the Customer must defend, indemnify and hold harmless the Company against all penalties, liability, claims, damages, costs and expenses whatsoever arising out of or in connection with the non-compliance.

- (b) Where the Goods are perishable and are not collected by the Customer, or a person that is authorised by the Customer to take collection, within 72 hours of the Customer receiving notice that the Goods are ready for collection, they may be disposed of, sold or returned to the Customer, at the Company's option.
- (c) Where the Goods cannot be delivered because they:
 - (i) are insufficiently or incorrectly addressed or marked or otherwise not identifiable;
 - (ii) are not collected or accepted by the Customer or a person that is authorised by the Customer to take collection; or
 - (iii) cannot be delivered due to the non-production of a Transport Document or a failure to make any required payment,

and are not collected from the agreed place of delivery by the Customer, or a person that is authorised by the Customer to take collection, within 14 days of the Customer receiving notice that the Goods are ready for collection, they may be disposed of, sold or returned to the Customer, at the Company's option. A notice from the Company or its agent to the Customer to the effect that the Goods cannot be delivered for any reason shall be conclusive evidence of that fact.

- (d) In the event that the Goods are disposed of or returned to the Customer in accordance with clause 8(b) or (c), the Customer must reimburse the Company for all costs, expenses and charges reasonably incurred in taking such steps.
- (e) In the event that the Goods are sold in accordance with clause 8(b) or (c), payment to the Customer of the net proceeds of any sale after the deduction of all costs, expenses and charges reasonably incurred by the Company in effecting such sale shall be equivalent to delivery. If any sale does not provide sufficient proceeds to discharge all liability of the Customer to the Company, the Customer acknowledges that it is not released from the remainder of its liability to the Company merely by the sale of the Goods.

Insurance

- 9. No insurance shall be effected by the Company for the benefit of the Customer or any other person except upon express instructions given in writing by the Customer and acknowledged and agreed by the Company in writing. Any insurance arranged by the Company is subject to the usual exceptions and conditions of the policies of the underwriter. Unless otherwise agreed in writing, the Company shall not be under any obligation to effect a separate insurance on each consignment of Goods but may declare it on any open or general policy. The Company is an agent in respect of the effecting of insurance and should the underwriter dispute their liability for any reason the insured shall have recourse against the underwriter only and the Company shall not be under any responsibility or liability whatsoever in relation thereto.

Containers

- 10. (a) If a Container has not been packed or stuffed by the Company, the Company shall not be liable for loss of or damage to the Goods if caused by:
 - (i) the manner in which the Goods have been packed or stuffed into the Container;
 - (ii) the unsuitability of the type of Container used for carriage or storage of the Goods, unless the Company has approved the suitability;
 - (iii) the defective condition of the Container provided that where the Container has been supplied by or on behalf of the Company this sub-clause (iii) shall only apply if the unsuitability or defective condition would have been apparent upon reasonable inspection by the Customer or Owner or person acting on behalf of either of them;
 - (iv) if the Container is not sealed at the commencement of the Carriage, except where the Company has agreed to seal the Container.
- (b) The Customer shall defend, indemnify and hold harmless the Company against all penalties, liability, loss, damage, costs and expenses arising out of or in connection with any of the matters referred to in clause 10(a).
- (c) Where the Company is instructed to provide a Container, in the absence of a written request to the contrary, the Company is not under an obligation to provide a Container of any particular type or quality.

Declarations by the Company regarding the Goods

11. Unless agreed by the Company in writing, the Company will not be obliged to make any declaration for the purposes of any statute, convention or contract as to the nature or value of any Goods or as to any special interest in delivery. Where the Company is required (by an Authority or otherwise) to make a declaration as to the weight of the Goods, including but not limited to providing a VGM, the Company will only make such a declaration where the Customer has provided the Weight Declaration. The Company reserves its right to refuse to make any declaration for or on behalf of the Customer, for whatever reason, and the Company will not be liable for any loss or damage suffered as a result of the Company not making such a declaration.
12. The Customer acknowledges that:
 - (a) it is required to review all declarations and documents that the Company prepares and/or files with the U.S. Customs and Border Protection or any other Authority, and shall immediately notify the Company of any errors, discrepancies, incorrect statements or omissions in any declaration or other document filed, or to be filed, for the benefit of the Customer; and
 - (b) the obligations in clause 12(a) are affirmative, non-delegable duties.

Company's inability to deliver and delay

13. Unless otherwise agreed in writing that Goods will be collected from, or delivered to, a specified location by a particular date, the Company will not, under any circumstances, be liable for any delay concerning the Goods.
14. If any Goods are unable to be shipped by the mode of transport the Company intended to facilitate or use due to a Weight Declaration being incorrect or disputed by a carrier or any other person involved in the carriage, handling or storage of the Goods, the Customer shall be liable for and must indemnify the Company for all penalties, liability, claims, damages, costs and expenses arising out of or in connection with:
 - (a) storage of the Goods;
 - (b) collection of the Goods and returning the Goods to the Customer;
 - (c) fees, charges and fines imposed by an Authority; and
 - (d) any other steps reasonably required to be taken by the Company in dealing with, and attempting to resolve, the dispute.

Liberties and rights of Company

15. The Company shall be entitled, except insofar as has been otherwise agreed in writing, to enter into contracts on behalf of itself or the Customer and without notice to the Customer for:
 - (a) the carriage of Goods by any mode of transport, route, means or person;
 - (b) the carriage of Goods of any description whether containerised or not on or under the deck of any vessel;
 - (c) the storage, packing, transshipment, loading, unloading or handling of Goods by any person at any place whether on shore or afloat and for any length of time.
 - (d) the carriage or storage of Goods in Containers or with other goods of whatever nature.
 - (e) the performance of its own obligations and to do such acts as in the opinion of the Company may be necessary or incidental to the performance of the Company's obligations.
16.
 - (a) The Company shall be entitled, but is under no obligation to, depart from the Customer's instructions in any respect if in the opinion of the Company there is good reason to do so in the Customer's interest and it shall not thereby incur any additional liability.
 - (b) The Company may at any time comply with the orders or recommendations given by any Authority. The responsibility of the Company in respect of the Goods shall cease on the delivery or other disposition of the Goods in accordance with such orders or recommendations.
17. If at any time the performance of the Company's obligations, in the reasonable opinion of the Company, is or is likely to be affected by any hindrance, risk, delay, difficulty or disadvantage whatsoever and which cannot be avoided by reasonable endeavours by the Company, the Company may, on giving notice in writing to the Customer or Owner, or without notice where it is not reasonably possible to give such notice, treat the performance of its obligations as terminated and allow the Customer, Owner or a person authorised by the Customer to take possession of the Goods at any place which the Company may deem safe and convenient, whereupon the responsibility of the Company in respect of the Goods shall cease. The Customer must reimburse the Company for all costs, expenses and charges reasonably incurred in arranging any additional carriage or handling.
18. If Goods or any part thereof are not collected by the Customer or a person that is authorised by the Customer to take collection within 72 hours of the Customer receiving notice that the Goods are ready for collection, the Company shall be entitled to store the Goods in the open or under cover at the sole risk and expense of the Customer and the Customer must reimburse the Company for all costs, expenses and charges reasonably incurred in arranging any additional carriage, handling or storage. This clause is not intended to limit any of the other rights available to the Company by reason of these Terms and Conditions including (but not limited to) those in clause 8.
19. The Company shall only retain such records that it is required to maintain in accordance with any applicable law, but not as a "record keeper" or "recordkeeping agent" (within the meaning of the United States *Tariff Act*) of the Customer. The Customer acknowledges that pursuant to Sections 508 and 509 of the *Tariff Act*, it has the duty and is solely liable for maintaining all records relating to the Goods that are required to be held under United States laws.

Subcontractors

20. The Customer warrants that no servant or subcontractor of the Company shall in any circumstances whatsoever be under any liability to the Customer or the Owner for any claims, damages, costs or expenses of any kind arising directly or indirectly from an act or omission of the servant or subcontractor while acting in connection with the Goods or any of the services provided to the Customer or the Owner.
21. In the event that a claim of the type referred to in clause 20 is initiated, the Customer shall defend, indemnify and hold harmless the Company against all liability, damages, costs and expenses arising out of the claim.
22. Without prejudice to clauses 20 and 21:
 - (a) every exemption, limitation, condition and liberty contained in these Terms and Conditions, and every defence and immunity which the Company is entitled to rely upon by reason of these Terms and Conditions, shall also be available and shall extend to every such servant or subcontractor who shall be entitled to enforce the same against the Customer;
 - (b) in entering into the contract, the Company does so not only on its own behalf but also as agent and trustee for such servants and sub-contractors.

Charges

23. (a) Unless otherwise agreed in writing and subject to this clause, all charges for services provided to the Customer or the Owner in connection with the Goods ("Charges") will be calculated in accordance with the rates:
 - (i) agreed between the Customer and Company prior to the execution of the Credit Application; and
 - (ii) amended at any time following the execution of the Credit Application, subject to the Company providing the Customer with at least 14 days' notice of the amendments.
- (b) The Company will be at liberty to issue an invoice, or invoices, for the Charges ("Invoice") immediately after the commencement of the services.
- (c) An Invoice must be paid no more than 30 days after it is provided to the Customer without discount, deduction, counterclaim or setoff, and regardless of any dispute between the Company and the Customer.
- (d) In the event that an Invoice is not paid in full within 30 days, the Company will be entitled to charge interest at the rate of 15 per cent per annum or the highest rate of interest permitted by any applicable law, whichever is less, in relation to any unpaid amount (without prejudice to any other rights of the Company). The Customer agrees that the rate of 15 per cent per annum is a genuine and reasonable pre-estimate of the Company's loss arising from the Customer's failure to pay an Invoice within 30 days.
- (e) Every special instruction from the Customer to the effect that an Invoice will be paid by a person other than the Customer will be deemed to include a stipulation that if the person does not pay the Invoice in accordance with clause 23(c), the Invoice will be payable by the Customer on demand and the Company will not be under any obligation to provide evidence of demand and non-payment by such other person when due.
- (f) The Customer shall pay to the Company any debt collection or legal costs involved in collecting overdue accounts.
- (g) The Customer must notify the Company of any questions, concerns or objections regarding an Invoice relating to services provided to the Customer or Owner within 60 days of receiving the Invoice, otherwise the Customer will not be entitled to dispute the Invoice.
- (h) The Company reserves the right to offset any amounts receivable from the Customer against any amounts payable to:
 - (i) the Customer;
 - (ii) the Owner; and/or
 - (iii) a company that is a holding company or a subsidiary of the Company.

This right exists irrespective of the date the liability has been created or debt incurred with the Company.

Lien

24. (a) The Company shall have a particular and general lien on all Goods and any and all other property of the Customer coming into the Company's actual or constructive possession or control, for any amount due to:
 - (i) the Company arising out of or in connection with any services provided in relation to the Goods and/or for any other services provided to the Customer or Owner; and
 - (ii) a Visy Entity other than the Company, for any services provided in relation to the Goods and/or for any other services provided to the Customer.
- (b) Prior to exercising the lien, the Company shall provide written notice to the Customer of its intent to exercise its lien, the property over which the lien will be exercised and the exact amount due and owing.
- (c) Unless, within 30 days of receiving the written notice referred to in clause 24(b), the Customer pays or provides a letter of credit for the entire amount due and owing, the Company will have the right to sell the Goods at public or

private sale or auction and apply the proceeds to the amount due and owing and also toward the costs and expenses of exercising the power of sale (including legal fees).

General indemnities

25. (a) The Customer shall be liable for and shall defend, indemnify and hold harmless the Company against all penalties, liability, claims, loss, damage, costs, expenses, fines, legal or other professional fees and all or any debt incurred by the Company arising out of or in connection with:
- (i) the Company acting in accordance with the Customer's or Owner's instructions;
 - (ii) any negligent act or omission of the Customer or the Owner; or
 - (iii) a breach of a warranty or obligation by the Customer.
- (b) Except to the extent caused by the Company's negligence, the Customer shall be liable for and shall defend, indemnify and hold harmless the Company in respect of all costs, expenses, fines, duties, taxes, imposts, levies, deposits and outlays of whatsoever nature imposed by any Authority arising out of or in connection with the Goods or the services provided to the Customer or the Owner.
- (c) Except to the extent caused by the Company's negligence, the Customer shall be liable for and shall defend, indemnify and hold harmless the Company against any loss, damage, contamination, detention or demurrage of Containers supplied by or on behalf of the Company for use in the carriage, handling or storage of Goods.
- (d) All advice and information provided by the Company is exclusively for the benefit of the Customer and the Customer shall defend, indemnify and hold harmless the Company for all liability, loss, damage, costs and expenses arising out of or in connection with any other person (including the Owner) relying on such advice or information.

Exclusion of liability

26. Except insofar as otherwise provided by these Conditions, the Company shall not be liable for any loss or damage whatsoever arising out of:
- (a) any negligent 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 authorised by the Customer to provide Instructions on their behalf;
 - (c) insufficiency of the packing 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 or any person acting on their behalf;
 - (e) inherent vice of the Goods;
 - (f) riots, civil commotions, strikes, lockouts, stoppage or restraint of labour from whatsoever cause;
 - (g) fire, flood or storm; or
 - (h) any cause which the Company could not avoid and the consequences whereof it could not prevent by the exercise of reasonable diligence,

and the Company shall not be liable in any event for any Consequential Loss, whether or not it was reasonably foreseeable to the Company that such damages might be incurred.

Limitation of liability

27. In all cases where liability has not been effectively excluded, whether by these Terms and Conditions or otherwise, the total liability of the Company is limited to:
- (a) US\$1,000 where the claim arises out of, or relates to, any of the subject matter referred to in clause 3(d);
 - (b) in any other case, US\$500.

Notice of loss, time bar

28. (a) The Company shall be discharged of all liability unless:
- (i) subject to clause 23(g), notice of any claim is received in writing by the Company within 21 days after the date specified in clause 28(b) below or within a reasonable time after such date if the Customer proves that it was impossible to so notify within 21 days; and
 - (ii) suit is brought in a proper forum and written notice thereof received by the Company within 9 months after the date specified in (b) below.
- (b) For the purposes of clause 28(a), the relevant date is:
- (i) in the case of loss or damage to Goods, the date of delivery of the Goods;
 - (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.

Defences and limitation of liability

29. The defences and limits of liability provided for by these Terms and Conditions shall apply in any action against the Company whether such action be founded in contract, bailment or in tort.

Legislation

30. Where any legislation applies to the services provided by the Company then:
- (a) these Terms and Conditions shall be read subject to any provision which is mandatory;
 - (b) the Company shall be entitled to any rights, immunities from or limitations of liability under such legislation.

Law and jurisdiction

31. The contract between the parties is governed by and construed in accordance with the laws of the State of California without consideration of principles of conflict of law.
32. Any claim against the Company arising out of or in connection with these Terms and Conditions or the services in relation to the Goods shall be determined exclusively by the United States District Court for the Southern District of California to whose jurisdiction the Customer irrevocably submits. The Customer agrees that it shall not institute legal proceedings in any other court and shall indemnify the Company for all legal costs and expenses incurred by the Company to transfer or to remove a suit filed in another forum.

Communication

33. All written communications between the parties must be in English and may be sent by facsimile, email or such other electronic media as the parties may agree.
34. Notwithstanding any prior dealings between the Company and the Customer or any rule of law of equity or provision of any statute or regulation to the contrary, any written communications, contracts or documents sent to the Company through the post shall be deemed not to have been received by the Company unless and until also provided to the Company in accordance with clause 33.

Enforceability

35. If any provision in these Terms and Conditions is held by a court or tribunal to be invalid or unenforceable, such invalidity or unenforceability shall only attach to such provision and the validity of the surviving provisions shall not be effected thereby.

PART II: COMPANY AS AGENT

Special liability and indemnity conditions

36. (a) To the extent that the Company acts as an agent, the Company does not make or purport to make any contract with the Customer for any aspect of the Services 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 third parties so that direct contractual relationships are established between the Customer and such third parties.
- (b) The Company shall not be liable for the acts and omissions of such third parties referred to in clause 36(a) above.
37. (a) The Company when acting as an agent has the authority of the Customer to enter into contracts on the Customer's behalf and to do such acts so as to bind the Customer by such contracts and acts in all respects notwithstanding any departure from the Customer's instructions.
- (b) Except to the extent caused by the Company's negligence, the Customer shall defend, indemnify and hold harmless the Company in respect of all liability, loss, damage, costs or expenses arising out of any contracts, proposed contracts, arrangements or understandings with third parties which the Customer causes to occur for the benefit of the Customer.

Choice of rates

38. Where there is a choice of rates according to the extent or degree of liability assumed by the persons carrying, storing, handling the Goods, no declaration of value where optional will be made unless otherwise agreed in writing.

PART III: COMPANY AS PRINCIPAL

Special Liability Conditions

39. To the extent that the Company contracts as principal for the performance of the Customer's instructions, the Company undertakes to perform, or in its own name to procure the performances of, the Customer's instructions and subject to the provisions of these Terms and Conditions, 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.
40. Subject to any compulsorily applicable law that provides otherwise, if it can be proved that loss of or damage to Goods occurred between the time the Goods are loaded on and discharged from a ship for carriage by sea or inland waterway, the Company's liability shall be determined by the United States *Carriage of Goods by Sea Act*.