

AP Global Logistics (Guangzhou) Co., Ltd Terms and Conditions

Introduction

These terms and conditions apply to and govern the provision of all Services provided by AP Global Logistics (Guangzhou) Co., Ltd (广州澳际物流有限责任公司) (“AP Global”). Other than where the parties have agreed in writing that the Terms and Conditions will be excluded or amended, they will form part of your Services Agreement with AP Global.

1 Definitions and Interpretation

For the purposes of these terms and conditions, unless the context or subject matter otherwise indicates or requires:

- a) **Additional Charges** means the additional charges, surcharges and fees applicable to the Services as outlined in the Pricing Schedule or as published at <https://apglobal-logistics.com/new-updates/fuel-other-surcharges/> from time to time.
- b) **AP Global Country Fact Sheet** means the country fact sheet tailored for and provided to the Client as part of the on-boarding process.
- c) **“China” or “PRC”** means the People’s Republic of China.
- d) **Customer** means the person or entity to whom, or on whose behalf, AP Global provides the Services.
- e) **Business Day** means a day which is not a Saturday, Sunday or a public holiday in the place where a service is to be supplied, an act performed, or a payment is to be made.
- f) **Claim** means any allegation, debt, cause of action, liability, claim, proceeding, suit or demand of any nature howsoever arising and whether present or future, fixed or unascertained, actual or contingent, whether at Law, under statute or otherwise.
- g) **Client** means the person or entity to whom, or on whose behalf, AP Global provides the Services.
- h) **Consequential Loss** means any economic loss, loss of revenue, loss of production, loss of profits, loss of income, loss of markets, loss of reputation, loss or impairment of goodwill, loss of business, loss of customers, loss of an opportunity or chance, loss of value, loss of use, loss of anticipated savings, increased costs of work or materials, or the cost of defending and settling any claim, demand or proceeding brought against a party by any third party even if the other party had knowledge that such damages or loss might arise, and any other indirect, incidental, special or consequential damages or loss.
- i) **Excluded Goods** means bullion, coins, cash, negotiable instruments of any kind, precious metals, gemstones, jewellery, wrought or unwrought metals, fragile goods valuable papers, antiques, pictures, works of art, securities, living creatures or plants drugs, weapons, human tissue, organs, blood or blood products, perishable items, glass, china, personal effects, household goods, second hand goods, used goods, cigarettes, tobacco and tobacco products, solar panels, large sporting good including kayaks, surf skis, long boards (malibus), windsurfers or similar equipment exceeding 3 meters in length.
- j) **Extra Charges** means the charges described clause 4 b).
- k) **Force Majeure Event** is defined in clause 8 a).
- l) **Goods** means those goods, products and materials delivered to, stored and distributed by, AP Global for the Client, or on the Client’s behalf, including any article, parcel, packaging, container or pallets supplied by or for the Client that do not include Client to Client shipments which AP Global does not accept.
- m) **Government Agency** means a government or government department or other body, a governmental, semi-governmental or judicial entity or authority. It also includes a self-regulatory organisation established under statute or a stock exchange.

- n) **Indemnifiable Loss** means Loss incurred by AP Global in connection with any of the following:
- a) an injury to or death of any person;
 - b) property damage;
 - c) a third-party Claim against AP Global; and
 - d) a Claim that AP Global or the Client has contravened any Laws.
- o) **An entity is “Insolvent” if:**
- a) it is unable to pay its due debts and its assets are insufficient to cover all its debts or it is clearly insolvent, as stipulated by the *Enterprise Bankruptcy Law of the People's Republic of China*;
 - b) it has entered into bankruptcy proceedings, including bankruptcy liquidation, reorganization, or reconciliation, or a bankruptcy administrator has been appointed;
 - c) it has reached a debt restructuring, reconciliation, or transfer agreement with creditors in accordance with legal provisions;
 - d) it has filed for bankruptcy, or a creditor has filed a bankruptcy petition with the People's Court, and the petition has been accepted;
It has failed to fulfill its obligations as required by law and has not been able to pay or provide the corresponding security within the statutory period;
 - e) it has been petitioned for bankruptcy by creditors due to an inability to pay due debts, or the court has declared bankruptcy;
 - f) the bankruptcy declaration has been made by the court due to an inability to pay due debts and has not been revoked; or
 - g) in any other circumstances, it is deemed unable to pay due debts, and its assets are insufficient to cover all its debts or it is clearly insolvent according to the laws of China.
- p) **Law** means all present and future laws, regulations, codes, ordinances, local laws, by-laws, orders, judgments, licences, rules, permits, agreements and requirements of all Government Agencies applicable in any jurisdiction in which activities contemplated by the Services Agreement may take place.
- q) **Loss** means any damage, loss, cost and expense (including legal and other professional advisers' costs and expenses).
- r) **Prices** means fees and charges payable for the Services calculated in accordance with the Pricing Schedule and these Terms and Conditions, or as otherwise agreed between AP Global and the Client.
- s) **Pricing Schedule** means a schedule or attachment that sets out the Prices, fees or charges applicable to the Services (and includes a quotation accepted within the quotation validity period) as updated from time to time in accordance with the Services Agreement.
- t) **Representatives** means officers, employees, agents, sub-contractors and any servant or agent of its subcontractors.
- u) **Related Body Corporate** means a subsidiary or a branch as defined in Article 13 of the *Company Law of the People's Republic of China (hereinafter referred to as the Company Law)*.
- v) **Services** means all services supplied by AP Global in connection with the Goods, including the carriage, storage, transportation, packing and unpacking, and delivery of the Goods.
- w) **Services Agreement** means the Terms and Conditions, Pricing Schedule and AP Global Country Fact Sheet applicable to the Services.
- x) **Terms and Conditions** means these terms and conditions as updated from time to time in accordance with clause 19 and made available at AP Global's website located at the following link www.apglobal-logistics.com
- y) A reference to a party includes its Representatives.
- z) The words “include”, “including”, “for example” or “such as” are not used as, nor are they to be interpreted as, words of limitation, and when introducing an example, do not limit the meaning of the words to which the example relates to that example or examples of a similar kind.

2 Services

2.1 Services

In consideration of the Client's compliance with its obligations under the Services Agreement, AP Global will provide the Services to the Client and the Client accepts that should AP Global agree to carry out any services free of charge, these Terms and Conditions will still apply. AP Global may perform some or all of the Services by using contractors, subcontractors or agents in its absolute discretion. AP Global may subcontract on any terms it sees fit and may act as agent or principal. AP Global will provide proof of acting as agent at the written request of the Client within 5 Business Days of receipt of the request failing which AP Global will be deemed to have acted as principal.

2.2 Customs

- a) The Services include customs clearance of the Goods through customs of any country to or from which the Goods may be carried. AP Global will act as a customs broker under Article 9 of the *Customs Law of the People's Republic of China* for the Client in effecting customs clearance. The Client must complete the customs agency form as required by AP Global. If the Client is domiciled outside of China, the Client will pay to AP Global a sum to be agreed between the parties to cover potential customs liabilities, penalties and expenses or in the alternative provide a guarantee backed by a first-class bank for such agreed sum. This sum will be increased to the original sum agreed if used or called upon by AP Global to cover customs liabilities, penalties and expenses. Provided all such sums have been paid by the Client at the end of dealings with AP Global the agreed sum (or is less the sum) held by AP Global shall be repaid to the Client or the guarantee may be extinguished.
- b) The Client appoints and authorises AP Global to act as its agent. The Client authorises AP Global to do all such things, and provide all such instructions, sign all such documents, and incur such disbursements, costs, expenses and charges as are reasonably necessary to enable AP Global to clear the Goods through customs of any country to or from which the Goods may be carried.
- c) Any disbursements, costs, expenses and charges incurred by AP Global in connection with clearing the Goods through customs of any country to or from which the Goods may be carried on behalf of the Client is the responsibility of the Client.

3 Prices, Extra Charges and Payment Terms

- a) The Client agrees to pay AP Global the Prices for the performance of the Services.
- b) In addition to the Prices and any Additional Charges, AP Global reserves the right to apply, at a rate which is reasonable in the circumstances, the following Extra Charges - any reasonable wharf storage charges, bond charges or charges for cartage to bond, and if the Goods are subject to any control by customs or quarantine, all customs duty, excise duty, any taxes, government or quarantine charges and costs, surcharges, fines or penalties payable or becoming payable or any other costs or expenses whatsoever or howsoever caused in respect of the Goods and any documentation relating to the Goods pursuant to any applicable laws or regulations, (including any Additional Charges levied from time to time by airlines, the International Air Transport Association, and/or sea freight companies becoming payable for any reason whatsoever in respect of the Goods), and any reasonable costs incurred by AP Global for converting Chinese Yuan to another currency in order to pay its subcontractors, will be paid by the Client, or if paid by AP Global, are to be reimbursed by the Client.
- c) In the event that any of the sums due under subclause b) above arise as a result of negligence by AP Global, the sums shall not be payable by the Client.
- d) The Client must pay to AP Global the full amount (including any Additional Charges) invoiced within 14 days from the date of the invoice. The Client may not withhold or reduce or defer any payment of money due to AP Global as a result of any claim, counterclaim or set-off.

- e) Words and expressions used in this clause that have a defined meaning in the *Provisional Regulations of People's Republic of China on Value-added Tax (VAT Regulations)* have the same meaning in this clause as in the VAT Regulations. Unless expressly stated otherwise, all consideration to be provided under this contract is expressed as exclusive of VAT. If VAT is payable by a supplier on any supply made under this contract, the recipient will, upon receiving a tax invoice from the supplier, pay to the supplier an amount equal to the VAT payable on the supply without deduction or set off.
- f) All charges will be raised by AP Global in Chinese Yuan. Any charges specified in a foreign currency appearing in a quote for Prices issued by AP Global are subject to conversion at invoicing in accordance with the Pricing Schedule and will reflect any fluctuations in relevant exchange rates since the date of issue of the quote. The risk of such fluctuations will be borne by the Client, whether included in a Price quote or not.
- g) The Prices and service capability are subject to review and may be changed by AP Global at any time at its sole discretion. The Client will be given notice of the new Prices and service changes in accordance with this clause at least 14 days beforehand, and the Client may terminate the Services Agreement without liability, during that 30 day notice period by providing not less than 7 days' written notice to AP Global.
- h) AP Global will not provide the Client with cash on delivery services. Should the Client request such services, such request must be made in writing and AP Global may accept the request in writing by an officer of AP Global in its absolute discretion. If acceptance is provided it is provided on the basis that AP Global will only act as agent for the Client in either collecting cash or arranging for a third party to collect the cash for and on the Client's behalf. Any liability of AP Global in relation to cash on delivery services shall be subject to the limits of liability as set out in clause 15.
- i) A fuel surcharge will be levied on all Prices, variable monthly as set out at <https://apglobal-logistics.com/new-updates/fuel-other-surcharges/> from time to time.
- j) If the Client fails to make payment on time, for each day of delay, the Client shall pay liquidated damages to AP Global at the rate of 0.3% of the unpaid amount due. Additionally, AP Global shall have the right to suspend the provision of services until the Client has settled all outstanding payments. If the delay exceeds 14 days, in addition to paying the overdue fees to AP Global, the Client shall also pay AP Global liquidated damages of 20% of the full amount (including any Additional Charges). If the liquidated damages are not sufficient to compensate AP Global for its losses, the Client shall also bear the liability for compensation.

4 Imports

- a) AP Global is not the owner of the Client's Goods that are imported. If AP Global is required to arrange the importation of the Client's Goods, the Client will be the importer and/or enterer for home consumption and must provide AP Global or its third-party sub-contractor with a valid import country registration number (such as Business or GST or other relevant number) for the Client five days prior to the vessel carrying the Goods landing in the home country of import. The place of consignment in the home country of import will be the location identified on the transportation document.
- b) The Client has sole liability for any GST, VAT, other import tax and/or customs duty payable in respect of clearing the Goods through customs. On occasion, AP Global may pay this liability on behalf of the Client and be reimbursed accordingly. Any such payment does not form part of the cost of the Services provided by AP Global and is payable additional thereto. If the Client wishes to use the home country's import deferral or deferment scheme it must notify AP Global prior to the Goods arriving in home country of import waters and must also provide all of the necessary information and documentation to facilitate the use of the import deferral or deferment scheme.

5 Exports

If AP Global is required to arrange for the export of the Client's Goods to another country, it will not be the exporter. As such AP Global will not be or become liable for any VAT or other tax payable in respect of the export of the Client's Goods. The Client shall have sole responsibility for ensuring all export documentation is received by AP Global prior to the Goods being delivered for export.

6 Client's Obligations and AP Global's Rights

- a) The Client must:
 - i. provide AP Global with all assistance, particulars, documents and other materials that are necessary to enable AP Global to perform the Services, including a comprehensive manifest by data file with full and accurate details of the Goods including their description, nature, size, weight, dimensions and number of packages using one line per consignee, to ensure that the performance of the Services by AP Global is not impeded, delayed or prevented by the Client which may lead to Additional Charges, penalties and/or fines. The Client will, where possible, be advised of all Additional Charges, penalties and/or fines prior to such charges being incurred;
 - ii. permit AP Global and its Representatives to enter into any premises that are owned, occupied or leased by the Client for the purposes of performing the Services;
 - iii. comply with all applicable laws and regulations relating to the nature, condition, notification, description, consignment and packaging of the Goods;
 - iv. ensure that AP Global is kept fully informed at all times and in a timely manner of all matters of which the Client is, or should be, aware, and which, if not made known to AP Global, could adversely impact on the safe and efficient performance of the Services, including keeping AP Global fully informed of the nature, type and contents of all Goods, including providing full and adequate descriptions of the Goods in any relevant consignment note, and specific transport, storage, handling, health and safety precautions or other requirements as are necessary or prudent to be followed or complied with in respect of the performance of the Services;
 - v. provide AP Global with clear written instructions with respect to the destination of, and care required for, all Goods, and with all necessary documentation, and/or information necessary to prepare the documentation, required to transport each consignment of Goods; and
 - vi. ensure that the Goods are packed in a manner adequate to withstand the ordinary risks of carriage, storage and handling having regard to their nature, are labelled and sorted correctly by destination country, and that all containers, packaging or pallets conform with the requirements of any person entitled to delivery of the Goods and the Client agrees to reimburse AP Global for any reasonable expenses that it may incur arising from any failure to so conform; and ensure that any transport unit used or supplied by them with the Goods therein for collection by AP Global are in good condition and are fit for purpose of intended carriage and that where AP Global supplies the transport unit for the Client to load the Goods that the transport unit is in good condition and fit for purpose on intended carriage.
- b) Subject to subclause c) below, the provision of the Services is subject to any specific terms and conditions applicable to each particular Service (such as contained in bills of lading, waybills, consignment notes or other transport documents), each of which shall be deemed to be incorporated in and to be a condition of the Services Agreement. In the event of, and to the extent of, any inconsistency between the Services Agreement and the conditions incorporated into the agreement under a bill of lading, waybill, consignment note or other transport document, these Terms and Conditions and the Services Agreement prevail.
- c) If any legislation, to include regulations and directives, is applicable to the Services then

the Services Agreement shall be read as being subject to such legislation but only so far as the Services Agreement terms and conditions are repugnant to such legislation.

- d) Pending forwarding and delivery, if necessary and through no fault of AP Global, Goods may be warehoused or otherwise held at any place or places at AP Global's sole discretion at the Client's risk and expense.
- e) The Client will do all such things, and provide all such instructions, and sign all such documents as are reasonably necessary to enable AP Global to enter the Goods for home consumption on behalf of the Client or otherwise obtain customs clearance of the Goods on the Client's behalf. AP Global may act as the Client's agent to provide any such documents and information as it considers necessary to a third party customs agent authorised in writing by the Client.
- f) Where the Client has declared the gross weight and/or gross mass and/or dimensions of the Goods and AP Global has relied upon that in making arrangements for transportation, and the actual gross weight and/or gross mass and/or dimensions of the Goods (if measured by AP Global) differs from that declared, then the greater amount will apply and the Client is responsible for all extra costs and liabilities incurred by AP Global resulting from the difference in the declared gross weight and/or gross mass and/or dimensions. AP Global is not obliged to measure or verify the weight, mass or dimension of any Goods and relies on the Client providing accurate shipping information in accordance with this agreement.
- g) In the event of liability for claims arising of a general average nature in connection with the Goods the Client must promptly provide adequate security in a form accepted by AP Global.
- h) AP Global is authorised to deviate in any way from the usual manner in which the Services are provided which may in its absolute discretion be deemed reasonable or necessary in the circumstances and has full discretion as to means, route and procedure to be followed in performance of the Services.
- i) If the Client expressly or impliedly instructs AP Global to use or it is expressly or impliedly agreed that AP Global will use a particular method of providing the Services, AP Global will give priority to that method but its adoption remains at the sole discretion of AP Global and AP Global is authorised to provide the Services by another method.
- j) AP Global is entitled to open any document, wrapping, package or other container in which the Goods are placed or carried to inspect the Goods to determine their nature or condition, or determine the ownership or destination, where any relevant consignment note or identifying document or mark is lost, damaged, destroyed or defaced.
- k) The Client must ensure that any container or other packaging of the Goods, and/or pallets which are delivered with the Goods, which are required to be returned to the owner (or its nominee), are returned within the required time. Without limiting any other remedies that may be available to AP Global if a container or pallet provided by AP Global (or its agent) is not returned or misused, damaged, stolen or lost whilst in the possession or control of the Client, the Client is liable to pay, and will reimburse AP Global for the reasonable costs of repair or replacement of the container or pallet.
- l) AP Global is not required to inspect the contents of any container sealed by tape, wrapping, shipping container seal or similar device at the time of receipt of such container.
- m) AP Global may retain all and any allowances, commissions or other remuneration customarily paid to them by third party providers.

7 Force Majeure

- a) Neither party shall be liable to the other, or be in default, for any failure to perform or delay in performing its obligations under the Services Agreement (other than an obligation to pay money), if that failure or delay is due to any reason or cause which could not with reasonable diligence be controlled or avoided by the party in question, including strikes, lockouts, acts of God, acts of nature, acts of governments, fires, floods, storms, riots, power shortages or power failure, war, sabotage, epidemic, pandemic or inability to obtain sufficient raw material, fuel, utilities ("**Force Majeure Event**").
- b) The party affected by a Force Majeure Event will promptly give to the other party, notice of the relevant event causing the inability to observe or perform the provisions of the Services Agreement and the reasons therefore.
- c) The duty to act with reasonable diligence to control or prevent a Force Majeure Event shall not oblige a party to settle or compromise any industrial dispute on terms other than it, in its absolute discretion, deems fit.

8 Client's Warranties

The Client warrants each time that it requests that Services be provided by AP Global to it under the Services Agreement that:

- a) it has full right, power and authority to contract with AP Global and deal with the Goods, and it holds all necessary licences, permits and consents to enable AP Global to provide the Services, and that it either owns the Goods or has the authority of the Owner to bind them to these Terms and Conditions for and on their behalf;
- b) all Goods provided to AP Global are fully and adequately described to AP Global including the name, nature, type, contents and value of all Goods, are adequately packaged so as to withstand the ordinary risks of carriage, handling and storage having regard to their nature, and comply with any relevant legislation or regulations relating to the nature, condition and packaging of the Goods and all expenses and charges relating to that compliance have been or will be paid by the Client;
- c) it has sufficiently informed AP Global about its requirements for the Services (including informing AP Global of any regulatory requirements relevant to the storage, carriage or handling of the Goods) to enable AP Global to perform the Services effectively and cost the Services properly;
- d) the Goods are not noxious, dangerous, hazardous, inflammable, explosive or likely to cause damage in any manner whatsoever;
- e) the person delivering or assigning any Goods to AP Global, or authorising any work, is properly authorised to do so;
- f) all descriptions, values and other particulars of Goods including gross weight, gross mass and dimensions provided to AP Global by the Client or the Client's Representatives under this agreement (including descriptions, values and other particulars of Goods provided for customs, consular and other purposes) is complete, accurate and up to date in all respects;
- g) any transport equipment used by the Client to deliver the Goods into the hands of AP Global is fit for purpose;
- h) it has complied with all applicable laws and regulations relating to import, export and re-export controls and sanctions, including that:
 - i. the Client, the Goods, and any technologies provided are not subject to any applicable sanctions list issued by any government or international authority (such as the United Nations Security Council, the European Union, the Australian Government, or the Government of China), and are not sourced from, destined for, transiting or otherwise connected to any person, entity, or country listed in or subject to any related sanctions, embargoes or restriction lists; and
 - ii. the Goods do not contain items or technology (and are not sourced from, based upon or comingled with items or technology) that are controlled under any import,

- export or re-export control laws and regulations of any applicable jurisdiction;
- i) they accept that any advice given by AP Global is for them alone and that they will not pass any advice given to them by AP Global onto any third parties and in the event that they do so that they shall indemnify AP Global for all and any loss and expense arising from such action;
 - j) the Goods will be delivered to the AP Global destination hub in the country of origin unless otherwise agreed in writing by authorised officers of the Client and AP Global; and
 - k) the Goods will not exceed the dimensions stated in the relevant AP Global Country Fact Sheet and in the event that the maximum dimensions are exceeded the Client shall be liable for any additional costs.
 - l) it has complied with all applicable laws and regulations relating to import, export and re-export controls and sanctions, including but not limited to: the Client, the Goods, and any technologies provided are not subject to any applicable sanctions list issued by any government or international authority (such as the United Nations Security Council, the European Union, the Australian Government, or the Government of China), and are not sourced from, destined for, transiting or otherwise connected to any person, entity, or country listed in or subject to any related sanctions, embargoes or restriction lists. The Goods do not contain items or technology (and are not sourced from, based upon or comingled with items or technology) that are controlled under any import, export or re-export control laws and regulations of any applicable jurisdiction.

9 Title and Risk

- a) All right, title and risk in the Goods will, at all times, remain with the Client or the Client's customer (as the case may be) as the legal owner. Subject to subclause b) below, AP Global acknowledges that it does not have ownership of, or property, right, title or interest in, any of the Goods while they are in AP Global's possession or control.
- b) AP Global shall have a particular and general lien for all and any sums due and owing to it on the Goods and any other goods and any related documents owned by the Client that are in the possession, custody or control of AP Global, and any related documents ("**Liened Goods**") are subject to a particular and general lien for all amounts payable by the Client to AP Global. On provision of 30 day's written notice AP Global has the right to sell some or all Liened Goods if those sums due are not paid within the periods specified in the Services Agreement and to apply the proceeds of such sale, less the costs of sale and any accrued storage which continues in favour of AP Global whilst the Liened Goods held under lien and any other expenses arising from exercising the lien in reduction of monies owing to AP Global. If the sums due are not covered by the proceeds of sale the Client shall remain liable for any balance due. If the sale proceeds exceed the sums due AP Global shall account to the Client for the balance.
- c) Nothing in the Services Agreement restricts any rights conferred on AP Global by any law, legislation or regulations relating to warehousemen's or carrier freight liens.
- d) Without limitation to other rights of the AP Global, from the time the Goods are in possession of the AP Global or a subcontractor, the Goods are subject to a continuing security interest in favour of the AP Global for payment of all amounts due and owing by the Client under this Services Agreement. The Client will not grant a security interest to another person, or allow any encumbrance to arise, in respect of the Goods.

10 Relationship of the Parties

The parties acknowledge that AP Global is an independent contractor and is not an employee of the Client (except where specifically provided in these Terms and Conditions).

11 Confidentiality and Personal Information

- a) The parties will treat as confidential, and will not disclose other than internally to its own employees, consultants, contractors and advisers (and only where it is reasonably necessary for those employees, consultants, contractors and advisers to receive and be aware of the information for either the purposes of providing the Services, or for internal management purposes) any information that comes into their possession pursuant to, as a result of entering into, or from the performance of, the Services except as required for performing their obligations and enforcing their rights under these terms and conditions. This obligation of confidentiality will not apply to information which comes lawfully into the public domain, is known to either party prior to the entry into an Agreement for the provision of the Services, is required to be disclosed by law, or relates to the affairs of a person and that person gives permission in writing for the disclosure of that information.
- b) AP Global (its affiliates and suppliers and their related parties) need to collect, use, process and access personal data (including personal data relating to senders, shippers, receivers, addressees, employees and officers and other customers of those parties) to fulfil their contractual obligations to the Client. Where personal data is collected or processed by AP Global (its affiliates and suppliers and their related parties) it will be held, used and protected for the purposes of the law in accordance with AP Global's Privacy Policy, and Cyber and Security Policy. The Client agrees to the use, transmission, and storage of personal information by AP Global in the manner described above and ensures that it has obtained the consent of the relevant parties (including consent for the Client to provide AP Global with their personal information).

12 Intellectual Property

Any system, process, or any other property, or intellectual property, developed by or on behalf of AP Global in connection with the provision of the Services to the Client shall be the sole and unencumbered property of AP Global.

13 Dangerous Goods and Limitations on Certain Other Goods

13.1 Acceptance of Dangerous Goods

- a) Except with the express written consent of AP Global, AP Global will not accept or deal with any noxious, dangerous, hazardous, inflammable or explosive goods, goods likely to harbour or encourage vermin or other pests or any goods likely to otherwise cause damage in any manner whatsoever (**Dangerous Goods**). The Client is liable for all and any loss or damage or expense to the Goods and to AP Global arising in connection with Dangerous Goods that have been delivered to AP Global by or on behalf of the Client without express written consent or knowledge of AP Global and for all and any loss and expense arising from the inherent nature of the Dangerous Goods.
- b) If the Goods are or include Dangerous Goods, the Client must comply with all applicable laws and regulations in relation to the Goods, including keeping AP Global fully informed of the nature, type and contents of all such Goods in respect of which Services may be performed, and providing full and adequate descriptions of the relevant Goods in any relevant consignment note. The Client is liable for all and any loss or damage or expense to the Goods and to AP Global resulting from the Client's failure to fulfill the aforementioned obligations, and AP Global shall be held liable only if such loss or damage is caused by AP Global's willful negligence.
- c) If, in AP Global's reasonable opinion, the Goods, either by themselves or in combination with other Goods, are likely for any reason (including fire, explosion, seepage or any form of contamination) to cause injury to persons or damage to the environment, other goods or property, the Goods may be retained, destroyed, disposed of, abandoned, removed or rendered harmless by AP Global without prior notice or compensation to the Client.

13.2 Excluded Goods

Except with the express written consent of APG, the client will not consign Valuable and/or Excluded Goods as per the above Definitions and Interpretation. If the Client delivers such Valuable and /or Excluded Goods to APG without the express written

consent of APG, the client will indemnify and hold harmless APG in respect of any loss or damage, including any charges, costs, expenses, fines, taxes, duties or similar incurred or suffered by APG in connection with such Valuable Goods and/or Excluded Goods.

13.3 Non-deliverable Goods

- a) Any Goods that cannot be delivered either because they are insufficiently or incorrectly addressed or because they are not collected or accepted by the Client or the addressee within a reasonable time may be returned at AP Global's option, and AP Global will provide notice in writing to the Client of such non-delivery and the reason for such non-delivery within a reasonable time.
- b) If the Client instructs to abandon the Goods, AP Global will obtain the right to dispose of or sell the Goods. The Client agrees that AP Global will open, dispose of, or sell the Goods at its sole discretion and that the Client will not claim any rights against AP Global in respect of the Goods.
- c) If AP Global does not receive further instructions from the Client in respect of the non-delivered Goods before the expiration of 28 Business Days from the provision of the notice referred to in 13.3 a) above, AP Global will return the Goods to the Client in accordance with the *Regulations on the Management of Undeliverable and Unreturnable Express Items* and other laws and regulations, and the Client shall bear all the costs incurred therefrom. If the Goods cannot be delivered and cannot be returned, AP Global has the right to handle the Goods in accordance with the *Regulations on the Management of Undeliverable and Unreturnable Express Items* and other laws and regulations.
- d) All reasonable charges and expenses arising in connection with the disposal or sale and/or return of those Goods shall be paid by the Client or sender.
- e) AP Global may apply the proceeds of Goods sold under clause 13.3b), less the costs of the sale and/or return of the Goods, in reduction of monies owing by the Client to AP Global. After payment of the costs of the sale and/or return of the Goods and any monies owing by the Client to AP Global, any surplus remaining shall be paid in accordance with applicable laws and regulations.
- f) A communication from any Representatives of AP Global to the effect that the Goods cannot be delivered for any reason shall be conclusive evidence of the fact.

14 Liability

14.1 Client enters AP Global's premises at own risk

If Representatives of the Client enter on to any of AP Global's premises, they do so at their own risk. It is the Client's responsibility to make its Representatives aware that they enter on to any of AP Global's premises at their own risk.

14.2 Limited liability of AP Global

- a) **Subject to clauses 14.2 b) and 20.4, to the maximum extent permitted by Law, AP Global will not be liable in contract, tort (including negligence), bailment or otherwise in law to the Client, or any third party for any Loss, including any Consequential Loss, arising out of or in connection with the Services Agreement or the provision of (or any failure to provide) the Services.**
- b) Clause 14.2 a) will not apply to any Loss suffered by the Client:
 - i. as a result of any Claim arising out of an injury to or the death of any person, to the extent that such Loss was caused by the negligent act or omission of AP Global; or
 - ii. to the extent that the Loss was a direct result of the fraud, gross negligence or wilful misconduct of AP Global.
- c) AP Global agrees to provide the Services using a reasonable degree of skill and care.

- d) **Subject to clause 14.2a), AP Global will not be liable to the Client for or in respect of any loss or damage of any kind whatsoever, including Consequential Loss, arising from any act or omission on the part of AP Global in connection with, arising out of or otherwise relating to, the provision of the Services, or the Services Agreement, including (without limitation) any delay in the collection of, or loss or damage to, or deterioration of, the Goods, mistaken delivery or failure to deliver or delay in delivery of the Goods either in transit or in storage, or any loss or damage arising out of or in connection with any quotation, advice, statement, representation or information given or made by or on behalf of AP Global to the Client or others as to the classification of or any matter material to the valuation of or the liability for or the amount, scale or rate of customs and/or excise duty or other impost, tax or rate charged in respect of the Goods or any cargo whatsoever above the value of such loss or CNY240 per consignment of Goods, whichever is the lower. For all and any other claims the limitation of AP Global's liability shall be the value of such claim or series of related claims or CNY4800 whichever is the lower. If a series of related claims is made the said limit of liability shall apply to such claims in the aggregate in any one trading year commencing from the date the first claim arose.**
- e) **At AP Global's sole discretion, instead of providing compensation under clause 14.2b) above it may either resupply the Services or pay the cost of the supply of the Services.**
- f) AP Global reserves the right to accept liability in excess of the limits set out above in clause 14.2b) and 14.2d) provided they receive from an authorised representative of the Client express instructions in writing including a declaration of the Goods concerned and their value and agree to pay AP Global's Additional Charges for accepting such increased level of liability and AP Global agrees to the same in writing through an Officer of AP Global.
- g) AP Global is not liable for any failure to adhere to agreed departure and arrival dates of Goods unless agreed in writing between an Officer of AP Global and the Client.

14.3 Liability of Client

- a) To the maximum extent permitted by Law, the Client will be liable for and indemnify AP Global and its Representatives, and keep AP Global and its Representative indemnified from and against, any Claim (including a third party Claim) for any Indemnifiable Loss, including Consequential Loss, arising out of or in connection with:
- i) any breach by the Client of its obligations under, or a representation or warranty made by it in the Services Agreement;
 - ii) any claim by any person in respect of or arising out of or in connection with:
 - i. loss of or damage to, or deterioration, mistaken delivery, failure or delay in delivery of, the Goods unless arising from the negligence of AP Global;
 - ii. AP Global acting as agent under the Services Agreement unless AP Global acts in contravention of the Client's instructions; and
 - iii) any claim or demand by, or liability to, any person who has, may have or claims to have an interest in the Goods which exceeds the liability of AP Global to the Client as provided for in clause 14.2(b) above.
- b) The Client's liability to AP Global under clause 14.3 a) is reduced proportionally to the extent that Loss was caused or contributed by AP Global.

14.4 Benefit

Every exemption, limitation, defence, immunity or other benefit contained in the Services Agreement to which AP Global is entitled will also be held by AP Global for the benefit of, and will extend to protect, each of AP Global's Representatives.

14.5 Not a common carrier

AP Global is not a common carrier and accepts no liability as a common carrier and reserves the right to refuse to carry any goods.

14.6 Notice of claims

This clause 14.6 is subject to clause 20.4. The Client must as soon as practicable notify AP Global in writing of all Claims (by it or a third party) under or in relation to or arising out of the Services Agreement, however, if a Claim relates to a Loss of the Goods it must be brought within 6 months from the date of consignment of the Goods. The Client must comply with AP Global's claim investigation process which includes providing AP Global with all relevant information or evidence and complying with any reasonable requests it makes.

15 Insurance

- a) Subject to subclause b), the Client is solely responsible (at the Client's cost) for taking out, and keeping current, all such insurances as are reasonable and prudent in light of the nature and form of the Services being provided to the Client by AP Global and the Client's obligations under the Services Agreement .
- b) Nothing in the Services Agreement requires either AP Global or the Client to take out or keep current any insurance policies in connection with the Goods or the Services.

16 Conditions of Carriage

- a) Any written instructions published by AP Global and provided to the Client thirty (30) days before they intend to take effect shall apply to the carriage of any Goods under the Services Agreement. Subject to clause 16 b), if the instructions referred to in this clause are inconsistent with a provision of the Services Agreement, the provisions of the Services Agreement prevail to the extent of the inconsistency.
- b) For any Goods carried by post, if the provisions referred to clause 16 a) are inconsistent with any provision of the Services Agreement, the provisions referred in clause 14.2 a) prevail.

17 Termination

17.1 AP Global's rights to terminate the Services Agreement

AP Global may terminate this Services Agreement:

- a) For any reason by giving not less than ninety (90) days' written notice to the Client;
- b) Immediately by giving written notice to the Client if:
 - i. the Client becomes Insolvent or ceases or threatens to cease business;
 - ii. the Client fails to make payment under the Services Agreement, and that failure continues for 14 days after receipt of notice from AP Global of its intention to terminate the Services Agreement by reason of such failure;
 - iii. the Client commits a breach of a material term of the Services Agreement and the breach is not remedied within 14 days after receipt of notice from AP Global specifying the breach and its intention to terminate the Services Agreement by reason of such breach;
 - iv. the Client commits a material breach of the Services Agreement which is not capable of remedy;
 - v. the supply or use of a Service is or is to become unlawful;
 - vi. in the reasonable opinion of AP Global, the provision of a Service is liable to cause death or personal injury or damage to property; or
 - vii. a Force Majeure Event affecting the Service being provided under the Services Agreement persists for 30 days or more.

17.2 Client's rights to terminate the Services Agreement

The Client may terminate the Services Agreement:

- a) For any reason by giving not less than ninety (90) days' written notice to AP Global;

- b) Immediately by giving written notice to AP Global if:
 - i. AP Global becomes Insolvent or ceases or threatens to cease business;
 - ii. AP Global commits a breach of a material term of the Services Agreement and the breach is not remedied within 14 days after receipt of notice from the Client specifying the breach and its intention to terminate the Services Agreement by reason of such breach;
 - iii. AP Global commits a material breach of the Services Agreement which is not capable of remedy; or
 - iv. a Force Majeure Event affecting the Service being provided under the Services Agreement persists for 30 days or more.

18 Consequences of termination

18.1 Survive termination

The termination of the Services Agreement for any reason will not extinguish or otherwise affect:

- a) any rights of either party against the other which accrued before the termination and which remain unsatisfied; or the provisions of clauses 3 (Fees, Charges and Payment Terms), 11 (Confidentiality), 12 (Intellectual Property rights), 14 (Liability), 17 (Termination), 18 (Consequences of termination), 20.5 (Governing Law); or
- b) or any other provision of the Services Agreement which is expressly stated to, or which by their nature, survive termination of the Services Agreement.

18.2 Outstanding monies

Upon termination of the Services Agreement, the Client must immediately pay to AP Global all amounts due and payable under this agreement for Services provided up to the date of termination.

19 Variation and Amendment

19.1 Material amendment by AP Global

- a) AP Global may amend or vary the Services Agreement including these Terms and Conditions by giving the Client prior written notice ("**Amendment Notice**") of at least 30 days' ("**Amendment Notice Period**").
- b) If the Client does not accept the Amendment Notice it may terminate the Services Agreement or cease the relevant Service by providing AP Global written notice at least ten (10) Business Days before the end of the Amendment Notice Period. The termination of the Services Agreement or cessation of the Service will be effective at the end of the Amendment Notice Period.
- c) The Client will be deemed to have accepted the Amendment Notice if AP Global does not receive its written notice of termination at least 10 Business Days before the end of the Amendment Notice Period.

19.2 Amendment by agreement

The parties may amend or vary any part of the Services Agreement by agreement in writing, signed and sealed by both parties.

20 General

20.1 Notice

Notices served pursuant to the Services Agreement including these Terms and Conditions must be made in writing and may be delivered by hand, by registered or signed for post or by email to the address of each party notified from time to time. For notices delivered by hand delivery, the notice is deemed given when it arrives at the Client's specified address; for notices sent by registered post, the notice is deemed delivered within 5 Business Days after the date of dispatch; for notices sent by email, the notice is deemed to be delivered upon its arrival at the Client's email system (unless the sender receives an automated

message that the email has not been delivered); but if the delivery, receipt or transmission is not on a Business Day or is after 5.00pm on a Business Day, the notice is taken to be received at 9.00am on the next Business Day.

20.2 Assignment

- a) A party may not assign, novate or otherwise deal with the Services Agreement except with the prior written consent of the other party. A party is not required to give consent or to justify the withholding of consent.
- b) Notwithstanding subclause (a) above, AP Global may assign or novate the Services Agreement (or any of its rights and obligations under the Services Agreement) without the other party's consent to any Related Body Corporate.

20.3 Enforceability and severance

- a) All provisions of the Services Agreement including these Terms and Conditions are severable. No provision hereof will be affected by the invalidity of any other provision except to the extent that such invalidity also renders such other provisions invalid and in the event of the invalidity of any provision, the Services Agreement will be interpreted and enforced as if such invalid provisions were not contained in the agreement .
- b) All the rights, immunities and limitations of liability in the Services Agreement will continue to have their full force and effect in all circumstances and notwithstanding any reach of the Services Agreement by AP Global or any other person entitled to the benefit of such provisions.
- c) In the event of any inconsistency between the English and Chinese versions of the Services Agreement (including these Terms and Conditions), the English version shall prevail.

20.4 Exclusion of terms, conditions, representations, warranties and undertakings

- a) **Except as expressly set out in the Services Agreement, AP Global disclaims all warranties, guarantees and conditions with respect to the Services, to the maximum extent permitted by Law.**
- b) Nothing in the Services Agreement (including clause 20.4 a) of these Terms and Conditions) excludes, restricts or modifies any right or remedy, or any guarantee, warranty or other term or condition, implied or imposed by any Law that cannot lawfully be excluded or limited (a "Non-Excludable Condition").
- c) Where permitted by Law, and providing it is reasonable to do so, AP Global limits its liability for breach of Non-Excludable Condition to either the resupply of the Service, or paying the cost of resupplying the Service, in respect of which the breach occurred.

20.5 Governing law and jurisdiction

- a) These Terms and Conditions, the Services Agreement and any dispute thereunder are exclusively governed by and will be construed in accordance with the law in force in the PRC. Subject to subclause (b) below, any dispute arising from or in connection with the Services Agreement shall be submitted to Guangzhou Arbitration Commission. The arbitral award shall be final and binding upon both parties.
- b) The arbitration shall be conducted under the Arbitration Rules of Guangzhou Arbitration Commission (the "GZAC Rules") for the time being in force, which rules are deemed to be incorporated by reference in this clause, for final resolution by commencing arbitration or writing to the Client to require them to commence any

claim by arbitration. For the avoidance of doubt, such discretion shall include the right to stay, removal, or dismissal of court proceedings (if any) in favour of arbitration. The arbitration shall be administered by the Guangzhou Arbitration Commission (the "GZAC"). The seat of arbitration shall be Guangzhou. The arbitration shall be conducted in English. The number of arbitrators shall be three, except that any claim under the amount of CNY 3 million (excluding interest) in value shall be resolved in accordance with the Summary Proceedings under the GZAC Rules and be heard by a sole arbitrator. Save as provided, the Summary Proceedings shall not otherwise apply.

20.6 Copies and Counterparts

Both Parties agree that this agreement may be executed in the following manner:

- a. this agreement may be executed in any number of copies, each signed by both parties to the agreement and each copy having the same legal effect; and/or
- b. this agreement may be executed in any number of counterparts. All counterparts, taken together, constitute one instrument and have the same effect as if the signatures on the counterparts were on a single copy of the agreement.

IN WITNESS WHEREOF, the Parties have caused these terms and conditions to be executed by their legal representative or duly authorized officer to sign these terms and conditions and sealed with the common seal by the Parties.

Signed: __

For and on behalf of 广州澳际物流有限责任公司 AP Global Logistics (Guangzhou) Co., Ltd

[NAME]

[POSITION]

(DATE)

Signed: __

For and on behalf of _____ **[Insert Chinese entity name (and English entity name if applicable)]**

[NAME]

[POSITION]

(DATE)