

STANDARD TRADING CONDITIONS OF NEPAL FREIGHT FORWARDER'S ASSOCIATION

The right to use these STANDARD TRADING CONDITIONS (STC) is reserved exclusively to the members of **NEPAL FREIGHT FORWARDER'S ASSOCIATION**, holding valid membership, whose liability towards customers are under these STANDARD TRADING CONDITIONS.

Clause 1. APPLICABILITY

Unless otherwise expressly agreed, these conditions will apply to the performance of all contracts concluded with members of the **NEPAL FREIGHT FORWARDER'S ASSOCIATION (NEFFA)**.

Clause 2. DEFINITION AND ABBREVIATION

The definition and abbreviation used in the text of these **STANDARD TRADING CONDITIONS** bear the following meaning:

1. STANDARD TRADING CONDITIONS hereinafter abbreviated as 'STC'
2. FORWARDER or NVOCC (Non Vessel Operating Common Carrier) or MTO (Multimode Transport Operator) is who by occupation and for common use performs the services and the related transactions constituting the object of these STC. For the purpose of these STC the meaning of the term FORWARDER is not limited exclusively to the legal definition by law for the obligations of the contract.
3. CUSTOMER / MERCHANT / OWNER includes the shipper, consignee, consignor, owner and receiver of goods/cargo, on whose behalf, for whose benefit and / or at whose request the FORWARDER undertakes any business or provides services or information under this STC.
4. GOODS / CARGO is the object of the services and the related transactions performed by the FORWARDER under these STC, which includes also any packing container or equipment for the protection of the goods in transportation, handling or storage.
5. PERSON means any physical person or body corporate, as well as any authority or institution.
6. FORWARDING DOCUMENT or Transport Document is any document issued by the FORWARDER in his own name and on his own behalf to cover the transportation, the storage or the handling of the goods/cargo.
7. HANDLING is the physical operations performed by the FORWARDER with the goods/cargo, such as: loading, unloading, stowing, re-stowing, re-arranging, securing and unsecuring, packing and unpacking, sorting, counting, weighing, marking.
8. TRANSPORT UNIT / EQUIPMENT are any container, truck, trailer and semi-trailer, railcar and wagon, tank or tanker, pallets, and all other devices specially constructed for carriage of goods by ROAD OR RAIL, WATER OR AIR.

Clause 3. OBJECTS

These STC set down the terms and conditions for and the liabilities of the parties in the course of any activity, service or business undertaken by the FORWARDER and / or by his employees, agents and/or by any other person acting at the request and on behalf of the FORWARDER, whether or not this activity, service or business is performed:

- a. Against remuneration or gratuitously,
- b. Be express or implied agreement,
- c. As a separate service or as an integral part of another service,
- d. At the request of the CUSTOMER, the OWNER or of any person having a legal right of the goods.

Clause 4. SCOPE OF APPLICATION

1. Any and all activities or services performed, agreements concluded and documents signed by the FORWARDER are undertaken solely and exclusively subject to these STC and to the mandatory legislation, unless the Parties have expressly agreed otherwise in writing.
2. By agreeing, expressly or by implication, to accept any service from or otherwise to deal with the FORWARDER, the CUSTOMER and the OWNER unconditionally accept that they conclude with the FORWARDER a contract, containing as its integral part these STC.
3. If any legislation or court decision limiting the rights or increasing the liability of the FORWARDER is mandatorily applicable to any business or service undertaken by the FORWARDER, same shall be applied only to the respective transaction or part thereof without otherwise affecting the validity or the meaning of the other provisions of these STC.
4. In agreement with the CUSTOMER, the FORWARDER may issue a FORWARDING DOCUMENT covering part or all of the contract for the carriage, storage or handling of the goods. In this case the relations between the FORWARDER and the CUSTOMER are determined by the provision of the FORWARDING DOCUMENT insofar as such provisions are inconsistent with these STC. The provisions of clause 3 above shall also be applicable.

Clause 5. LEGAL CAPACITY OF THE FORWARDER

While undertaking the activities, services and transactions which constitute the objects of these STC, the FORWARDER May act in one of the following legal capacity:

A. As PROXY - in the name and on behalf of the CUSTOMER/ OWNER:

- a) In the role of PROXY the FORWARDER acts within the limits of the express powers conferred on him by the CUSTOMER and is liable only for his faults and for abuse of said powers.
- b) The rights and liabilities in the contracts concluded for the carriage, storage or handling of the goods or for the services arise directly between the parties to the contract - the CUSTOMER and the actual SERVICE PROVIDER.

B. As AGENT - in his own name, but on behalf of the CUSTOMER/ OWNER:

- a) The FORWARDER acts as AGENT in any case when the CUSTOMER can directly enforce the execution of the contract made for a particular service, whether or not he has been named or disclosed as Principal by the FORWARDER.
- b) In the role of AGENT the FORWARDER secures the conclusion and implementation of contracts for carriage, logistic support, storage or handling of goods and other services acting in his own name, but on behalf of the CUSTOMER.
- c) If acting as AGENT the FORWAQRDER has assumed a ' DEL - CREDERE' liability, he is entitled to a separate remuneration
- d) The CUSTOMER hereby expressly authorized the FORWARDER to perform any and all acts necessary for the discharge of his duties in the interest of the CUSTOMER, as well as to enter into contracts and agreements on behalf of the CUSTOMER for:
 - i. The carriage of goods by any route or means of transport or by any carrier, separately or jointly with other goods of any kind:
 - ii. The storage or handling of goods by any person, at any place and for any length of time.
- e) The FORWARDER is not liable for contracts, concluded on behalf of the CUSTOMER with carriers, Warehousemen and other provided of the contractual services, in which the liability of the contractors is limited or excluded according to their usual trading conditions.
- f) On conclusion of the contracts, the FORWARDER is entitled to accept for and on behalf of the CUSTOMER the usual trading Conditions of the Providers of the contractual services.
- g) Acting in his name and on behalf of the CUSTOMER, the FORWARDER is entitled to perform nay of his obligations either himself or through another person (including also an intermediate Forwarder or sub-agent) and any such person is also entitled to the benefit of these STC.

C. As PRINCIPAL- OPERATOR -in his own name and on his own behalf.

- a. Where the FORWARDER has held himself out to be the Provider of the contractual services, has accepted instructions for the carriage, storage or handling of the goods and has issued a FORWARDING DOCUMENT/Transport document for the service of for part thereof, it is dedeed that the FORWARDER is a Principal-OPERATOR for the respective service or part thereof.
- b. Contracting in the role of OPERATOR / Carrier, the FORWARDER undertakes to perform and/ or on his own behalf to procure the contractual services and, subject to the provisions of these STC, accepts liability for loss or damage occurring between the time he has taken the goods into his charge and the time of their delivery to the entitled person.
- c. The FORWARDER can also be a NVOCC, Stevedore or Warehouseman and acting as OPERATOR deals exclusively on the basis of these STC and the conditions embodied in the text of the FORWARDING /Transport DOCUMENT issued in his name and on his behalf.
- d. The FORWARDER reserves to himself a reasonable liberty as to the routes, means, technologies and procedures employed in the carriage, storage or handling of the goods.

Note: the charging of a fixed price for nay services does not of itself determine whether the FORWARDER arranges such service as AGENT or as Principal- OPERATOR.

Clause 6. FORWARDERS OBLIGATIONS

1. The FORWARDEDER shall perform his duties and services with professional care, diligence and skill and within a reasonable time.
2. The FORWARDER is obliged to provided the necessary staff, organization, structure and skills for the execution of the contractual services.
3. Subject to the provisions of these STC, the FORWARDER must take reasonable steps to execute the instructions of the CUSTOMER, whereby:
 - a. The FORWADER shall notify the CUSTOMER if he considers his instructions to be insufficient or inexecutable:
 - b. The FORWARDER may depart from those instructions if there is good reason to consider that this departure is necessary to safeguard the interests of the CUSTOMER.

4. Within the limits of his professional knowledge and of reasonable care for the interests of the CUSTOMER, the FORWARDER shall inform in advance the CUSTOMER of any circumstances, which might obstruct the execution of the forwarding order.
5. If after conclusion of the contract the FORWARDER becomes aware of circumstances, which in his opinion make it partly or wholly impossible for him to fulfill his duties, he shall inform the CUSTOMER and seek further instruction.

Clause 7. CUSTOMERS OBLIGATIONS

1. The CUSTOMER shall give sufficient and implementable instructions for the execution of the forwarding order.
2. By agreeing to accept any service or business from the FORWARDER, the CUSTOMER warrants the following:
 - a) That he is legally entitled to dispose of the goods and that he accepts these STC also for and on behalf of the OWNER of the goods;
 - b) That he has the necessary information of the transactions in respect of which he employs the services of the FORWARDER, including the terms of delivery of the goods;
 - c) That he knows the goods and their properties and the written description of the goods and their properties is complete and accurate for the purposes, for which the goods are delivered to the FORWARDER;
 - d) That the goods are not the object transactions prohibited in any of the countries of origin, destination or transit of the goods;
 - e) That the goods are properly prepared, packed and marked for the purposes, for which they are delivered to the FORWARDER (unless the preparation, packing and marking of the goods is the responsibility of the FORWARDER)
 - f) That he accepts all rights and immunities of the FORWARDER and all his own obligations and liabilities under these STC, including also the obligation to indemnify in certain circumstances the FORWARDER against expenses, losses, damages and claims of the third parties.

NOTE:

Where the goods are carried in or on any transport unit then, save when the FORWARDER has accepted to perform loading of the unit as Principal-OPERATOR, the CUSTOMER warrants the following:

- a) That the goods are suitable for carriage in or on the transport unit;
- b) That the goods are suitably packed, stowed and secured in or on the transport unit;
- c) That the transport unit is in a suitable condition to carry the goods loaded therein.

Clause 8. INDEMNITIES DUE BY THE CUSTOMER

1. Even if there is no negligence or fault of the CUSTOMER, the CUSTOMER undertakes to indemnify the FORWARDER as follows:
 - a) For all taxes, duties, levies, fines, expenses, losses, damages and liabilities sustained or incurred by the FORWARDER in the course of execution of the Forwarding Order;
 - b) Against claims by third parties and by any Authority, when such claims concern the goods of the CUSTOMER and the services of the FORWARDER and the liability which such claims seek to impose on the FORWARDER exceeds the extent of scope of his liability under these STC.
2. The obligation defined above shall be revoked only when the indemnity due by the CUSTOMER is expressly included in the remuneration of the FORWARDER or when the expenses, damages, losses and liabilities result from the fault or misconduct of the FORWARDER.
3. A notice from the CUSTOMER that the forwarding order is made by or executed for the account of a third party does not revoke the obligations and the liabilities of the CUSTOMER towards the FORWARDER.
4. Any claims involving the liability of the FORWARDER under these STC shall be directed solely and exclusively against the FORWARDER and the CUSTOMER shall under no circumstances raise any such claims against the Directors, Employees and Agents of the FORWARDER (the corporate body), unless expressly authorized to do so by the FORWARDER.

Clause 9. VALIDITY OF OFFERS

1. Quotations made by the FORWARDERS are valid if accepted immediately and for immediate execution and are subject to withdrawal or revision, unless they contain express provisions to the contrary.
2. In the event of cost changes beyond his control the FORWARDER may change his offers and prices with or without prior notice.
3. The prices in the offers and offers and contracts made by the FORWARDERS include only the services expressly listed therein and, unless otherwise agreed, relate to standard and harmless commercial goods of

normal dimensions and weight and in normal condition, which do not require special conditions of carriage, storage or handling.

4. The execution of the Forwarding contract pre-supposed the existence of normal conditions of the performance of the contractual services, unimpeded communications and continuation in force of the freight rates, costs and exchange rates on the basis of which the relevant contract has been made.
5. The FORWARDER may recover from the CUSTOMER any additional outlays not included in the contractual price, provided that he has notified the CUSTOMER of same. For this purpose, a general indication (such as: 'plus usual additional charges') shall suffice.

Clause 10. CUSTOMER'S ORDERS

1. The execution of the FORWARDER'S offers accepted by the CUTOMER shall begin within a reasonable time after the FORWARDER has received and confirmed a concrete order containing all instructions and particulars necessary for the performance of the contractual services.
2. The CUSTOMER shall bear all consequences arising from the execution FORWARDER might have foreseen those consequences, but has not warned the CUTTOMER.
3. Even when the FORWARDER has accepted the order, the FORWARDER may at his reasonable discretion refuse to execute it in the absence of a security or deposit for the payment of his expenses and remuneration.
4. If the CUTOMER withdraws a confirmed order, the FORWARDER is entitled to receive a compensation of his expenses, except it proved that the order was withdrawn through the fault of the FORWARDER.

Clause 11. INSTRUCTIONS, DOCUMENTS AND INFORMATION

AA. INSTRUCTIONS

1. Neither party is responsible for loss or damage arising solely as a consequence of verbal instructions, unless same have been confirmed in writing by either side.
2. Instructions transmitting side can prove that employing the care of a good Merchant it has had good reason to consider the receiving persons to be so appointed or authorized.
3. The burden of proof of the correct and timely transmission of instructions rests on the party, which seeks to rely on those instructions to avoid liability or to engage the liability of the other party.
4. Written instructions received by the FORWARDER are treated as definitive authority until revoked by the CUSTOMER. However, instructions to hold the goods at the disposal of a third party cannot be revoked once this third party has exercised its right of disposal.
5. The parties must notify each other immediately of any changes in their address otherwise, all notices are sent to the last know address.
6. The FORWARDER is not obliged to check the authenticity of signatures and the authority of signatories to sign any documents or instructions concerning the goods.
7. Except by special agreement, any instructions for delivery of the goods in specified circumstances only (such as: against payment or against surrender of a particular document) are accepted for execution by the FORWARDER only as an Agent for the CUSTOMER, insofar as third parties are engaged to effect compliance with such instructions.

BB. NOTICES AND DOCUMENTS:

1. Notices in respect of the goods duly sent by the FORWARDER are sufficient evidence in disputes and claims.
2. The FORWARDER is entitled to send notices unregistered and documents of nay kind uninsured.

CC. ADVICE AND INFORMATION:

The FORWARDER upon request, for the CUSTOMER use, provides advice and information in any form only and subject to the provisions of clause 8 of these STC.

Clause 12. ACCEPTANCE, STORAGE AND FORWARDING OF GOODS

AA. ACCEPTANCE:

1. The FORWARDER accept and delivers the goods by external appearance (by number of packages, type and condition of the packing) and by documents, without responsibility for the contents.
2. The FORWARDER is not obliged to submit or to accept binding statements for the contents, weight, value and condition of the goods, or for any special interest in delivery; the usual acknowledgement of receipt issued by the FORWARDER is not a proof of those particulars.
3. An exception from the provisions as above may be made under special arrangement with the CUSTOMER, as well as when the latter requests and pays for a verification of the contents, weight, condition or the declared value of the goods. The result of this check may be registered and then binds the FORWARDER, but even in this case the FORWARDER does not act as an Expert.
4. An order to the FORWARDER to receive incoming goods authorizes him to disburse all charges due on delivery. In this case the FORWARDER is entitled to a separate remuneration for the advance payment made on behalf of the CUSTOMER.

5. The goods are deemed to be accepted by the FORWARDER when the CUSTOMER (or any person acting on his behalf) delivers the goods to any person acting on behalf of the FORWARDER and such delivery is made in accordance with the instruction of the FORWARDER.

NOTE:

- a) **The FORWARDER is obliged to inspect, maintain the condition of or repair the goods and their packing only under an express agreement with the CUSTOMER. If the goods reach the FORWARDER in a visibly impaired condition, he must establish the damage, inform the CUSTOMER and maintain the latter's rights against the Carriers or the delivering persons.**
- b) **Weighting, sorting, marking, labeling, packing and re- packing of the goods is undertaken by the FORWARDER only following an express order of and under special agreement with the CUSTOMER.**

BB. STORAGE OF GOODS:

1. When the FORWARDER acts as OPERATOR, the storage of goods, their acceptance into and delivery from a warehouse is undertaken subject to the STANDARD WAREHOUSING practices, unless otherwise agreed in writing.
2. Intermediate storage of goods undertaken before, after or during the course of transport arranged by the FORWARDER is subject to the provision of these STC and the liability of the FORWARDER for loss of or damage to the goods is limited in accordance with clause 25 below.
3. **CC. FORWARDING OF THE GOODS:**
4. Even if the CUSTOMER delivers the goods accompanied by a transport document the FORWARDER is entitled to dispatch the goods under a new transport document showing the CUSTOMER and/or the FORWARDER as Consignor.
5. The FORWARDER is not responsible for the dates of shipment and arrival of the goods and for their transit time.

Note:

The FORWARDER is not obliged to carry, store or handle the goods of the CUSTOMER separately from other goods.

Clause 13. UNSURMOUNTABLE FORCE

1. Events outside the control of the FORWARDER which obstruct partly or wholly the execution of his contractual duties absolve the FORWARDER from his obligations and liability under the affected forwarding order for the time- period during which such events last.
2. Should such events occur, the FORWARDER is entitled to withdrawn from the contract even if same has been partly executed, but in doing so he should exercise reasonable care to protect the interest of the CUSTOMER / OWNER. In the course of such events, the CUSTOMER is also entitled to terminate unilaterally the contract.
3. In the circumstances stated in sub-clause (1) and (2) above, the FORWARDER is entitled to receive compensation of the costs incurred up to this moment in respect of the forwarding order.

Clause 14. CUSTOMS CLEARANCE

AA. CUSTOMS REQUIREMENTS:

1. The CUSTOMER is obliged to make in due time a statement on the customs status of the goods delivered by the FORWARDER and to submit all necessary particulars and documents for the customs entry and for the customs clearance of the goods.
2. The CUSTOMER is obliged to inform in due time the FORWARDER of all official requirements in respect of the goods delivered to the FORWARDER (such as: customs duties, taxes, levies and the like). The consequences resulting from mistakes and omissions of the CUSTOMER in this respect are entirely on his own account.
3. The FORWARDER is obliged to observe the prescribed customs status of the goods and is exempted from the obligation to execute any instructions of the CUSTOMER which may result in an infraction of customs rules and regulations.

BB. CUSTOMS CLEARANCE:

1. In principal, customs clearance upon acceptance, dispatch and delivery of the goods is done by and for the account of the CUSTOMER, the OWNER or the Consignee of the goods.
2. The FORWARDER may effect customs clearance by special agreement with, under written authorization by and at the cost and risk of the CUSTOMER. Even in this case the FORWARDER performs customs clearance on basis of the available documents and all the declaration of the CUSTOMER and bears no responsibility for their authenticity.
3. The order to forward goods to a Consignee in a foreign country includes also an order to clear customs, if this is necessary to avoid impediment to the execution of the forwarding contract.
4. The order to deliver goods under customs bond to a Consignee in the country includes an authorization for the FORWARDER to perform the required customs formalities.
5. In the cases described in sub-clause (2), (3) and (4) above, the FORWARDER is entitled to demand from the CUSTOMER or owner a prepayment of or a security for the customs duties, taxes and levies due on the goods.
6. The FORWARDER is entitled to a separate remuneration for performing customs formalities and/or for the payment of part or all customs duties and taxes, even when such remuneration has not been agreed in advance.

Note:

The rights of the FORWARDER against the CUSTOMER shall not be affected by acts of the Authorities and by legal decisions and obligations in respect of the goods, for which the FORWARDER is not liable. In such cases, the provisions of clause 8 of these STC will apply.

Clause 15. DELIVERY OF GOODS BY THE FORWARDER

1. The FORWARDER is entitled to deliver the goods with discharge of liability to any adult person belonging to the business or household of the Consignee, whereby the provisions of sub-clause (1) and (2) of clause 12 of this STC apply.
2. Delivery of the goods to the Consignee is subject to the payment of all collect charges due. If the Consignee refuses to pay part of or all collect charges due, he is deemed to refuse to take delivery of the goods.
3. If the CUSTOMER, the OWNER or the Consignee does not take delivery of the goods at the time and place when and where the FORWARDER is entitled to dispose of the goods at his own discretion with or without prior notice in the following manner.
4. To return the goods to the Consignor against payment of all costs incurred thereby and of his usual remuneration.
5. To store the goods or part thereof, whereupon the liability of the FORWARDER for the goods shall wholly cease and all costs incurred shall be on account of the CUSTOMER, even if the warehouse belongs to the FORWARDER.

Clause 16. DISPOSAL UPON IMPOSSIBILITY TO DELIVER THE GOODS

1. The FORWARDER is entitled to sell or to otherwise reasonably disposal of goods which for nay reason (including also the provisions of sub-clause (1) and (2) of clause 15) cannot be delivered in accordance with the instructions of the CUSTOMER or the OWNER, under the following conditions:
 - a. On 30 days preliminary notice to the CUSTOMER.
 - b. When the CUSTOMER or the other persons having a legal interest in the goods cannot be traced - upon expiry of 90 days from the date on which the Consignee should have taken delivery.

- c. Without prior notice perishable goods, for goods that have perished/ deteriorated and / or the keeping of which may cause damage to the FORWARDER or to third parties, or contradicts the applicable legislation.
2. In the cases stated in sub-clause (1) above, the FORWARDER disposes of the goods for and at the expenses of the CUSTOMER/OWNER and is obliged to put at the disposal of the rightful Claimant the proceeds of the sale after deducting all costs pertaining to the goods. However if said costs exceeds the proceeds of the sale, the FORWARDER is entitled to be paid the difference.

Clause 17. INSURANCE

INSURANCE OF THE GOODS:

1. Insurance of the goods is effected at the expense of the CUSTOMER and only pursuant to his express written instructions stating the insured value and the risks to be covered.
2. Any insurance effected by the FORWARDER for and on behalf of the CUSTOMER is subject to the usual conditions and exceptions of the liability of the insurer underwriting the risk.
3. The FORWARDER is not obliged to concluded a separate insurance for each consignment.
4. When effecting insurance on behalf of the CUSTOMER, the FORWARDER neither enjoys the rights of the insured, nor incurs any liability as insures. The CUSTOMER has no recourse against the FORWARDER in respect of the insurance.

Note:

i) in the event of insurance claims, the FORWARDER is deemed to have fulfilled his duties when he has taken reasonable measures to safeguard the interests of the CUSTOMER and his rights under the insurance policy and has assigned the rights under the insurance contract (if made out in the FORWARDER) to the CUATOMER and/or to the insures

ii) The FORWARDER is relieved of liability to the CUSTOMER for any part of a loss or damage covered by an insurance taken out by the FORWARDER on behalf of the CUSTOMER.

iii) The rights of the insurer against the FORWARDER in respect of claims assigned to the insurer by the CUSTOMER/OWNER may not exceed the rights of the CUSTOMER under these STC. Otherwise the provisions of clause 8 of this STC apply.

iv) The FORWARDER is entitled to separate remuneration for effecting insurance to the goods for pursuing insurance claims and for collecting insurance reimbursement in accordance with the instructions of the CUSTOMER.

Clause 18. SPECIAL CONDITIONS RELATING TO SPECIFIC GOODS

DECLARATION OF GOODS WITH SPECIAL PROPERTIES:

(1) Goods which:

- are overweight, overdimensional or perishable cargo and/or
- constitute a hazard for the human health or life, for any property or for the environment and/or
- require special conditions or facilities for their transport, storage or handling are accepted by the FORWARDER only under express written agreement, based on the declaration of the CUSTOMER for the specific properties and the special conditions of carriage, storage or handling of such goods.

- 2) If the goods described in sub-clause (1) above are delivered to the FORWARDER in the absence of such declaration or if same is incomplete or imprecise, the CUSTOMER is liable for any costs and damages arising therefrom, even when there is no negligence or fault on his part.

Note:

When delivering dangerous goods, in addition to the requirement stipulated in clause 18 the CUSTOMER is further obliged:

1. **To declare the class of the hazard and its classification number and to deliver the goods packed and marked in accordance with the applicable legislation and/or convention for the carriage of dangerous goods on the respective mode of transport.**
2. **To issue written instructions for**
 - a) **the nature of the hazard and the security measures which should be applied in the handling, storage and carriage of the goods;**
 - b) **the measures, which should be applied in case of an accident involving the dangerous goods, including the aid which must be rendered to persons who have come in contact with the goods or with the substances derived therefrom.**

Clause 19. RIGHT OF DISPOSAL OF GOODS WITH SPECIAL PROPERTIES

- (1) The FORWARDER may at any time unload, render harmless or destroy goods which present an imminent danger to human life or health, to property or to the environment. The FORWARDER shall exercise reasonable efforts to notify in advance the CUSTOMER/OWNER of his actions, except in an emergency situation
- (2) If in the circumstances stated in sub-clause (1) above the CUSTOMER has not complied with the requirement of the note of clause 18, then the FORWARDER is not liable to pay any compensation or to make any General average Contributions in respect of the goods.

Clause 20. GOODS EXCLUDED FROM ACCEPTANCE

- (1) Except under special agreement the FORWARDER does not accept and does not deal with bank notes, coin, bullion, precious stones and metals, jewellery, valuables, antiques, objects of art, bonds, shares, negotiable instruments and securities of any kind, tobacco products and alcohol.
- (2) Should the CUSTOMER nevertheless delivery or cause the FORWARDER to deal with any such goods otherwise than under special agreement, the FORWARDER shall be exempted from any liability whatsoever for or in connection with such goods howsoever arising.

Clause 21. LIABILITY OF THE FORWARDER

- (1) The liability of the FORWARDER is applied, limited, excluded or terminated as defined in these STC.
- (2) If the FORWARDER may invoke a provision in these STC, which limits or excludes his liability, then it is not an admissible counter-plea that a tortuous act has been committed.

Clause 22. LIMITATIONS OF THE LIABILITY OF THE FORWARDER AS PROXY AND AS AGENT

- (1) In principal, the liability of the FORWARDER when acting in the role of proxy or Agent for and on behalf of the CUSTOMER is engaged only through mistakes or faults of the FORWARDER.
- (2) Acting as proxy or Agent the FORWARDER is not liable for the loss or damage caused to the CUSTOMER by the Provider of the services of carriage. Storage or handling of the goods, unless the FORWARDER has not exercised due diligence in the choice of such Provider.

- (3) In the circumstances defined in sub-clause (1) and (2) above, the FORWARDER has against third parties in respect of the claim. Thereby the liability of the FORWARDER is terminated, unless the loss or damage is due to the fault of the FORWARDER.
- (4) At the request of the CUSTOMER, the FORWARDER will collect information and evidence concerning the loss or damage, which is the subject of the claim.
- (5) Under a special agreement with the CUSTOMER, the FORWARDER may raise a claim and/or pursue legal proceedings against liable third parties.

Note:

- A. While rendering services in the role of OPERATOR, the FORWARDER is liable for the proved loss or damage which has occurred between the time he has taken the goods in his charge and the time of delivery of same, subject to the provisions of clause 21 and 22 above.**
- B. In any case the FORWARDER is liable solely and exclusively for the direct loss of or damage to the goods taken in his charge and bears no liability for any consequential losses and damages and for the loss of revenue, profit or market in particular, in the event of loss or damage to a part of the goods which renders the other parts unusual, the FORWARDER is liable only for the loss of or damage to the directly affected part.**

Clause 23. EXCLUDED RISKS

- AA. The FORWARDER is relieved of liability for loss of or damage to the goods if same is due to one of the following causes:
1. Implementation of the instructions of the CUSTOMER and acts or omissions of same;
 2. The absence of the CUSTOMER when the nature of the goods and/or services requires such instructions;
 3. Internal or hidden defect of the goods or their packing;
 4. Inadequate or insufficient packing;
 5. Inherent vice and properties of the goods and/or the materials of which the goods are manufactures;
 6. Actions or rodents, worms, moth, fungi, mold and of other pests and vermin;
 7. Normal ageing, biological and physic-chemical processes usually taking place in the goods;
 8. High and low temperatures, desiccation, humidity or condensation of vapors in a warehouse or a transport unit not designed to maintain a constant temperature or humidity;
 9. Other atmosphere influences and the consequences thereof during the storage in warehouse or the carriage in or on a transport unit not protected from such influences provided the use of such facilities has been authorized by the CUSTOMER.
 10. Hospitalities and military action; civil disturbances; strikes and lockouts; robbery; action of armed gags; acts of any authority; nuclear accidents and the consequences thereof; fire; earthquake and other natural disasters; events which are of a Force- Majeure nature and other causes or events which the FORWARDER cannot reasonably avoid and/ or the consequences thereof he is unable to prevent by the exercise of reasonable diligence.
- BB. The burden of proof that the loss or damage was due to one or more of the cause specified above rests on the FORWARDER.

CC. In any case where according to these STC the FORWARDER is liable to pay compensation in respect of loss or damage to the goods and it is known where such loss or damage occurred, the extent and the amount of his liability shall be determined by the provisions of the applicable law or convention, which provisions:

- a) Cannot be departed from by private contract;
- b) Would have applied if the Claimed had made a separate and direct contract with the actual Provider of the service where the loss or damage occurred and had received the particular document, which must be issued in order to make such law or convention applicable.

Clause 24. CALCULATION OF COMPENSATION

- (1) Without prejudice to the limitations defined in clause 25, the compensation due by the FORWARDER cannot exceed the value of the lost or damaged goods at the time and place where the FORWARDER has taken same in his charge.
- (2) This value is determined by reference to the declared invoice price of the goods or in the absence of such price - in a descending order according to: the current commodity exchange price, the current wholesale price, or by reference to the usual value of goods of the same kind and quality.
- (3) Compensation due from the FORWARDER is paid in Nepalese currency and is recalculated (wherever necessary) according to the central rate of exchange of the Nepal Rastra Bank on the date when the loss or damage has occurred, or when this date is unknown - on the date when the loss/damage was established.
- (4) Where the Claimant is a foreign person, the compensation may be paid in foreign currency according to the value and rate of exchange established by applying the provisions of sub-clause (2) and (3) above provided the Transport Contract is made in foreign currency.

Clause 25. LIMIT OF COMPENSATION

- (1) In any case, compensation due for loss of or damage to the goods is limited to the equivalent of:
 1. SDR 2.00 per kilo of gross weight of the goods lost or damaged but not exceeding SDR 666.67 per package or unit, for goods carried by sea or inland and for goods carried by international combined transport in case the place where the loss or damage has occurred cannot be established.
 2. Rs 150.00 per kilo of gross weight of the goods lost or damaged but not exceeding Rs. 5000.00 per package or unit, during carriage by road or by rail.
- (2) In case of delay in delivery if the rightful Claimant proves that thereby he has sustained a loss, but not exceeding his remuneration due as Agent or as Operator for the respective service.
- (3) In the case of any other claims the compensation due by the FORWARDER is limited to whichever shall be the least of the following amounts:
 1. The value of the goods the subject of the relevant transaction between the FORWARDER and the CUSTOMER, but not exceeding SDR 2.00 per kilo of gross weight of those goods with a maximum of SDR 666,67 per package or unit.

Note:

- 1. If the FORWARDER acts as Principal- OPERATOR in respect of the international carriage of goods by air, then his liability is governed on a contractual basis by the provisions of the Warsaw Convention (i.e. claim shall be US Dollar 20.00 per kilo).**
- 2. By special agreement and against additional remuneration the FORWARDER may accept liability in excess of the limits set out in these STC.**

3. The limits of liability, defined in clause 21 of this STC shall be waived only for loss or damage caused by criminal acts of the FORWARDER or where the FORWARDER has expressly accepted a liability covering declared value and/or declared interest in delivery of the goods.

4. When the compensation which the FORWARDER has to pay covers the full value of the goods determined according to clause 24 above, the CUSTOMER or OWNER is obliged to transfer to the FORWARDER the title over the goods and all rights, which he may have against third parties in respect of the goods.

Clause 26. CLAIMS

TIME LIMITS AND PROCEDURES:

- (1) Any claim howsoever caused must be documented and notified in writing to the FORWARDER immediately after the events alleged to give rise to such claim become known to the Claimant, but in any case not later than:
 - (2) 5 days of taking delivery in the case of loss or damage which is not apparent;
 - (3) 20 days after the agreed or the usual time-limit for delivery for delay in delivery or for non-delivery of the goods;
 - (4) 30 days after the event in all other occurrences.
- (1) above are not complied with then it is presumed that the loss or damage has occurred after the FORWARDER has effected delivery of the goods.
- (2) If the time limits and procedures stated in sub-clause The time limit for the presentation of proved claim against the FORWARDER is 3 (three) months, which start to run accordingly the provisions of clause 27 below.
- (3) When the carriage is subject to the provisions of an international convention, the time limits and claim procedures provided for in this convention shall apply.
- (4) The claim is deemed to be legally tendered only after the CUSTOMER has paid all sum due to the FORWARDER without deferment, reduction or set-off.
- (5) When the provisions of this Article have not been complied with or when the Claimant with his actions or omissions has prejudiced a counter-claim against liable third parties, the FORWARDER may reject the claim on this basis alone.

Clause 27. PERIOD OF LIMITATION

- (1) The period of limitation for any-legal action arising in respect of the services of the FORWARDER is determined in accordance with the Nepalese law and the applicable international conventions.
- (2) This period limitation starts to run as follows:
 1. In the case of partial loss, damage or delay in delivery - from the date of delivery;
 2. In the case of total loss - from the thirtieth day after the expiry of the agreed time-limit for delivery, or where there is no agreed time-limit-from the sixtieth day following the date on which the goods were taken over by the FORWARDER or by the provider of the contractual services;
 3. In all other cases- from the ninetieth day after the confirmation of the forwarding order.

Clause 28. PAYMENT OF THE FORWARDER'S SERVICES CHARGES AND REMUNERTATION

TIME-LIMIT;

- (1) The CUSTOMER must pay to the FORWARDER all sums immediately when due, without deferment, reduction or off-set, irrespective whether such sums constitute remuneration for services rendered or costs and all damages sustained by the FORWARDER which, according to these STC, are on account of the CUSTOMER and/or of third parties having a legal interest in the goods.
- (2) If a deadline for the payment has not been expressly agreed, the sums will be considered overdue and the CUSTOMER in default of payment after the expiry of 7 days from the date of issue of the FORWARDER'S invoice for CUSTOMERS in Nepal and 14 days from the date of issue of the invoice for CUSTOMERS abroad.

Note:

- a) **In the case of default on due payments the payer becomes liable to a daily charge on the overdue sum amounting to 2% per month interest rate or part of month.**
- b) **Insofar as this is consistent with the applicable currency regulations, the FORWARDER may demand from the CUSTOMER payment in currency of invoice raised. The exchange rate where applicable shall be as per the central rate of exchange of the Nepal Rastra Bank on the date of issue of the FORWARDER'S invoice.**
- c) **Notwithstanding acceptance by the FORWARDER of instructions to collect part of or all charges and remuneration due to him from a third party, the CUTOMER remains jointly responsible for the payment of such charges and remuneration when due.**
- d) **The FORWARDER is entitled to recover all sums due to him either from the CUSTOMER or from the OWNER, the Consignor and the Consignee of goods.**

Clause 29. SECURITY

- (1) The FORWARDER is entitled to demand partial or complete prepayment of or a security for his remuneration and for all expenses and charges arising in the execution of the forwarding order, including also expenses resulting from events of General average nature.
- (2) The FORWARDER is entitled to take any reasonable measures to safeguard his interests and to secure reimbursement of the costs, charges and damages sustained in the execution of the forwarding order, including disposal of the goods at his discretion, unless such costs and damages result through the fault of the FORWARDER.

Note:

- 1. The FORWARDER is not obliged to provide at his expense security and deposit for the payment of freight, duties, taxes or other costs. If the FORWARDER nevertheless renders such security or deposit at his expenses, he is entitled to demand immediate compensation.**
- 2. Offsetting in respect of nay debts or claims arising out of the forwarding contract is allowed only if such debts and claims are already due and are uncontested.**
- 3. The FORWARDER is entitled to be paid and retain all brokerages, commissions, discounts and other remuneration customarily paid in the execution of the forwarding contract, event when acting as Agent for the CUSTOMER.**

Clause 30. RIGHT OF LIEN

- (1) In order to secure payment of any monies due, the FORWARDER has the unconditional and irrevocable right of lien over the goods and documents, which are the subject of such debt.
- (2) This right of lien extends also to any other monies, goods and documents, which are in custody or control of the FORWARDER and are the property of the irregular Debtor.

- (3) No transaction or legal act accomplished in respect of the goods shall affect the right of lien described above.

Clause 31. RIGHT OF DISPOSAL

- (1) If any sums due to the FORWARDER are not paid within 30 days after the FORWARDER has given notice to the Debtor by registered post or e-mail or telex or courier that he has exercised his right of lien over the goods, then the FORWARDER may sell those goods by auction or otherwise at his own discretion.
- (2) In doing so , the FORWARDER acts at the expense of the Debtor and is not liable for any reduction in value on the sale of the goods or for any other consequential losses of the CUSTOMER/OWNER, or for nay claims of third parties having a legal interest in the goods.
- (3) The FORWARDER is entitled to apply the net proceeds of the sale to satisfy the debt. The Debtor is not relieved of liability to compensate any outstanding balance in favour of the FORWARDER. Any sum remaining after the debt to the FORWARDER has been satisfied will be deposited in a Bank at the disposal of the CUSTOMER/OWNER.

Clause 32. FINAL PROVISIONS

RELATIONS BETWEEN A PRICIPAL AND AN INTERMEDIATE FORWARDER:

- (1) Where a FORWARDER residing in Nepal has entrusted the execution of a part of or the whole forwarding contract to an intermediate FORWARDER abroad, the relations between the principal and the intermediate FORWARDER are governed by the standard Trading Conditions.
- (2) Where a FORWARDER has entrusted a part of or the whole forwarding contract to an intermediate FORWARDER in Nepal, the relations between the principal and the intermediate FORWARDER are governed by these STC. Whereby the principal FORWARDER appears as the CUSTOMER under these STC.
- (3) All matters not expressly dealt within the text of these STANDARD TRADING CONDITIONS are subject to the provisions of the specific forwarding contract, the applicable international conventions and the law of Nepal. Those provisions govern also the legal relationship between the FORWARDER and the CUSTOMER and interested third parties in respect of the forwarding contract.

Clause 33. CHANGINGIN LEGISLATION

- (1) Should the existing legislation be changed or new mandatory legislation governing the business and services of the FORWARDER enacted, the parties shall comply with such new legislation irrespective whether same has been expressly agreed. The provisions of sub-clause 3 of clause 4 of these STC will also apply.
- (2) If any of the provisions of these STC becomes inapplicable, this shall not affect the validity of the STC. The parties shall substitute the abrogated provisions with new ones as close as possible to the meaning of the initial text.

ANY DISPUTE ARISING IN THE INRERPRETATION OR THE IMPLEMENTATION OF THESE **STANDARD TRADING CONDITIONS** WHICH CANNOT BE SETTLED AMICABLY, SHALL BE REFFERED TO THE JURIDICTION OF THE COURTS AT THE PLACE WHERE THE FORWARDER HAS ITS SEAT AND SHALL BE RESOLVED SUBJECT TO THE PROVISIONS OS CLAUSE 32 AND 33 ABOVE.

Adopted by NEFFA and announced at Katmandu on CARGO DAY July 29,2000.

(Original version in English and authenticated Nepalese Version also shall be made available.