

Company's Standard Terms and Conditions

Section I

Acceptance and Interpretation

1. The following terms and conditions ("**Conditions**") shall be deemed to be incorporated into and form part of any contract between Panda Logistics (NY), Inc., hereinafter referred to as "**Panda**" and the Customer in relation to the provision of all business undertaken by Panda ("**Services**"). Receipt of an order or confirmation of a quotation from the Customer will be deemed to be acceptance by the Customer of these Conditions. These Conditions shall apply to all business undertaken by Panda, provided that where a document is issued by or on behalf of Panda and bears the title of, or includes the words, "bill of lading" (whether or not negotiable), or sea or air "waybill" and provides that Panda contracts as carrier, the provisions set out in that document, if inconsistent with these Conditions, shall be paramount and prevail over these Conditions to the extent that such provisions are inconsistent but no further. All other terms and conditions are hereby expressly excluded. No servant or agent of Panda has any authority to add or to vary these Conditions, unless such addition or variation is reduced to writing and signed by a duly authorized representative on behalf of Panda. Panda reserves the right to amend these conditions at any time. Unless otherwise stated, the current version shall supersede and replace all previous versions of this terms and conditions. Any variation requested by the Customer must be agreed to in writing by Panda to be effective.

2. In these Conditions: "**Customer**" means the person for whom any Services are performed by Panda and his executors, administrators, successors and permitted assigns. "**Dangerous Goods**" shall include explosives, inflammable liquids or material, poisons, corrosive substances and liquids, compressed gases, acids, radioactive substances and any other goods, substances or liquids likely in the opinion of Panda they become a danger to other goods, persons or property. "**Valuables**" shall include bullion, coins, precious stone, jewellery and antiques.

3. Panda are forwarding agents and, except in the special circumstances to which Sections II and III of these Conditions apply, act solely as agents in performing and securing services for the Customer and entering into contracts on the Customer's behalf with other persons. Except in the special circumstances to which Section III of these Conditions apply, Panda are not carriers, and do not make or purport to make any contract for the carriage, storage, packing or handling of goods with the Customer. Panda are not common carriers. The provisions of this Section I and Section IV shall apply to all Services.

4. Panda shall be entitled to perform any of its obligations hereunder by itself or by any associated companies, or by any other person, firm or company carrying out the functions of a forwarding agent. Any contract to which these Conditions apply is made by Panda on its own behalf, and also as agent for and on behalf of any such associated company or other person, and any such company or other person shall be entitled to the benefit of these Conditions. The Customer will not seek to impose upon any such company or other person a liability greater than that accepted by Panda under these Conditions.

5. Panda shall be entitled (and the Customer is deemed to have expressly authorized panda) to enter into contracts:

(a) for the carriage of goods by any route or by any means;

(b) for the storage, packing or handling of the goods by any persons at any place or places and for any length of time; and to do such acts as may be necessary or incidental thereto at the absolute discretion of Panda and to depart from the Customer's instructions in any respect if in the opinion of Panda it is necessary or desirable to do so in the Customer's interests and the Customer shall be bound by all such contracts and acts.

6. The Customer warrants that he is either the owner or the authorized agent of the owner of the goods to which any business relates, and further warrants that he is authorized to accept and is accepting these Conditions not only for himself but also as agent for and on behalf of the owner of the goods and all other persons who are or may hereafter become interested in the goods (all such persons being hereinafter called "the Owner"). The Customer also warrants that the description and particulars of any consignments furnished by or on behalf of the Customer are accurate.

7. The Customer undertakes not to tender for transportation any goods which require temperature control without previously giving written notice of their nature and the particular temperature range to be maintained and, in the case of a temperature controlled container stuffed by or on behalf of the Customer, the Customer further undertakes that:

- (a) the container has been properly pre-cooled or pre-heated as appropriate;
- (b) the goods have been properly stuffed in the container; and
- (c) the container's thermostatic controls have been properly set by the Customer.

If the requirements of this clause 7 are not complied with, Panda shall not be liable for any loss of or damage to the goods caused by such non-compliance.

8. Except under special arrangements previously agreed in writing, Panda will not accept business relating to valuables, livestock or plants. Should a Customer nevertheless deliver any such goods to Panda or cause Panda to handle or deal with any such goods other than under special arrangements previously agreed in writing, Panda shall not be liable for any loss or damage to or in connection with the goods, however caused.

9. Except under special arrangements previously agreed in writing, Panda will also not accept business relating to dangerous goods. Should a Customer nevertheless deliver any such goods to Panda or cause Panda to handle or deal with any such goods otherwise than under special arrangements previously made in writing, the Customer shall be liable for all loss or damage caused by or to or connected with the goods however arising, and shall indemnify Panda against all penalties, claims, demands, costs and expenses arising in connection therewith and the goods may be destroyed or otherwise dealt with at the sole discretion of Panda or any other person in whose custody they may be at the relevant time. If such goods are accepted under special arrangements previously agreed in writing, they may nevertheless be so destroyed or dealt with if in the opinion of Panda they become a danger to other goods, persons or property.

10. Panda shall not be obliged to make any declaration for the purpose of any statute or contract as to the nature or value of any goods or as to any special interest in delivery, unless required by law or expressly instructed by the Customer in writing.

11. Panda shall not be obliged to arrange for a Customer's goods to be carried, stored or handled separately from the goods of other customers.

12. Panda will not insure a Customer's goods unless expressly instructed by the Customer in writing. Panda shall not be obliged to effect a separate insurance on each consignment, but may declare it on an open or general policy. All insurance effected by Panda is subject to the exceptions and conditions of the policies of the insurance company or underwriters taking the risk. Any claim on the policy shall be made and any negotiations with or proceedings against the insurers shall be conducted by the Customer and not by Panda.

13. Panda shall be entitled to retain and be paid all brokerages, commissions, allowances and other remuneration customarily retained by or paid to forwarding agents and insurance brokers.

14. Panda shall have a security interest in and general lien on all goods or documents relating to goods in its possession for all moneys outstanding at any time from the Customer or Owner, and shall be entitled to sell or dispose of such goods or documents at the expense of the Customer and apply the proceeds in or towards the payment of such outstanding moneys (and costs and expenses of enforcement and additional charges referred to in these Conditions) on 28 days' notice in writing to the Customer.

15. If the Customer or its consignee is unable to receive goods at the place they are to be delivered immediately on their arrival, Panda will be at liberty to unload them into its own or any other storage place. Delivery at any such storage place shall be deemed to be delivery in accordance with these Conditions. Panda will have a general lien on and security interest in such goods for all storage and other charges incurred up to the time that the Customer removes the goods from such place of storage.

16. Panda shall be entitled at the expense of the Customer to sell or dispose of:

- (a) on 21 days notice in writing to the Customer or where the Customer cannot be traced after the goods have been held by Panda for 90 days, all goods which in the opinion of Panda cannot be delivered, either because they are insufficiently or incorrectly addressed or because they are not collected or

accepted by the consignee or for any other reason, and

(b) without notice, perishable goods which are not picked up immediately on arrival, or which are insufficiently or incorrectly addressed or marked, or which in the opinion of Panda would be likely to perish in the course of the carriage, storage or handling.

Estimates, Quotations, Charges and Payment

17. Estimates are merely an estimate of likely costs and charges and are not binding on Panda. Quotations are given on the basis of immediate acceptance and subject to a right of withdrawal or revision by Panda at any time. All estimates and quotes exclude any errors and omissions by Panda, which exclusions are payable by the Customer in addition. If at any time there is any alteration in the rates of freight, rates of exchange, insurance premiums or other charges applicable to the goods, quotations and charges shall be subject to revision accordingly with or without notice.
18. All quoted charges exclude Duty and Duty shall be payable on the Payment Date in the same manner as the charges.
19. Charges for the Services shall be as set out in the quotation provided by Panda. Unless specified in Credit Application Approval, the Customer must pay the charges for the Services in cash (or by direct credit of funds) prior to delivery without set-off or deduction unless alternative prior arrangements have been made with Panda in writing. If Panda has not received payment in cleared funds by 5.00pm on the Payment Date or delivery (where payment is required in cash), the Customer may be charged interest on the amount outstanding at 2.5% per month calculated on a daily basis from the Payment Date to the actual date of payment.
20. If the Customer fails to pay any amount on the due date or commits any other default under these Conditions and any such default continues for seven days, Panda may refuse to deliver any goods and suspend performance of the Services for the Customer under these Conditions and any other contract until any default is remedied.
21. The Customer shall, upon demand, pay to Panda all of the costs and expenses Panda may suffer or incur as a result of remedying any breach by the Customer of these Conditions or enforcing the payment of money or any other obligation or right under these Conditions, including solicitor/client costs.
22. Panda reserves the right, in the event of any unforeseen and unavoidable circumstances beyond its control, to make additional charges for time lost or additional costs incurred as a result of the circumstance.
23. Rental and warehousing charges must be paid monthly in advance coinciding with the Payment Date (with a proportionate adjustment for a broken period) and do not include removing, packing, unpacking, stowing, un-stowing or restoring, each of which may be subject to an additional charge. A separate charge for receipt and/or delivery of goods will be made if the Customer conveys the goods to and/or from Panda's storage facility.
24. The Customer authorizes Panda to pay any charge owing to any storage contractor from whose premises any goods are removed, or to any carrier who delivers the goods to Panda, and the Customer agrees to reimburse Panda for all such payments on demand.
25. Where goods are consigned:
- (a) on terms that they shall be paid for on delivery, and if for any reason payment is not made in full; or
 - (b) on terms that Panda shall only deliver the goods to the consignee on production of a forwarder's certificate of transport, house bill of lading, delivery order or similar document, and owing to the failure to demand such a document the goods are delivered to the consignee before he has paid for them in full;
- Panda may, at the absolute discretion, reimburse the Customer with the amount of payment not so made, whereupon the Customer shall, on request, assign to Panda by an instrument in writing the whole of the Customer's title of or interest in the goods and the right to receive payment therefore, and shall co-operate fully with Panda in enforcing all rights so assigned. Notwithstanding that it may be agreed between Panda and the Customer that Panda's charges in respect of any transaction shall be payable by the consignee or any other person, if such consignee or other person shall fail to pay the same or any part thereof within a reasonable time of due demand being made on him, the Customer shall be liable to Panda therefore without prejudice to Panda's rights against such consignee or other persons.

Limitation of Liability

26. If the Customer acquires or holds out as acquiring the Services for the purposes of a business, the Customer agrees that the guarantees and remedies in the Consumer Guarantees Act are excluded from

these Conditions and no warranties, undertakings or representations (express or implied) shall be deemed to have been given by or on behalf of Panda in respect of the Services. Where the Customer acquires the Services for a personal, domestic or household use or purpose, nothing in these Conditions is intended to have the effect of contracting out of the Consumer Guarantees Act.

27. Panda shall not be liable to the Customer or Owner:

- (a) for loss or damage caused by any failure to carry out the Customer's instructions or by any failure to perform Panda's obligations under any contract to which these Conditions apply unless such loss or damage is due to the willful neglect or default of Panda or its servants or agents;
- (b) for any loss or damage caused by delay or loss of market or for consequential or indirect loss or damage, however caused;
- (c) for any loss of profit, loss of goodwill, loss of reputation, loss of business opportunity or loss of anticipated savings, however caused, and whether direct or indirect;
- (d) for any loss or damage arising from or in any way connected with marks, weights, numbers, brands, contents, quality or description of any goods however caused.

28. Without prejudice to Clause 27 hereof in no case shall the liability of Panda however arising, and notwithstanding that the cause of loss or damage may be unexplained exceed:

- (a) the value of the goods in relation to which the claim is made, or
- (b) the sum at the rate of \$2.50 per kilo in the gross weight of the goods, whichever shall be the less.

29. Without prejudice to Clause 27 hereof, in no case shall Panda be liable, however the liability of Panda arises, and notwithstanding that the cause of loss or damage may be unexplained, if:

- (a) in the case of delay in delivery or non-delivery, a claim is not made within 14 days of the date when the goods should have been delivered, and
- (b) in any other cases, a claim is not made within 14 days of the event giving rise to the claim. Any claim not made and notified as aforesaid shall be deemed to be waived and absolutely barred.

30. No claim of any kind shall be made against any servant or agent of Panda on any ground whatsoever. No claim of any kind shall be made against any associated company of Panda or against any forwarding agent employed by Panda in pursuance of clause 4 hereof, or against any of their respective servants or agents on any ground whatsoever.

31. The Customer and Owner shall be liable for and shall defend, indemnify and hold harmless Panda against all duties, taxes, payments, fines, expenses, losses, damages (including physical damage) and liabilities suffered or incurred by Panda or its servants or agents in the performance of its obligations hereunder, including any liability to indemnify any other person against claims made against such other person by the Customer or by the Owner.

32. Where in any circumstances Panda acts as principal in entering into a contract with any other person for the carriage, storage, packing or handling of the goods, Panda is not the carrier for the purpose of the Carriage of Goods, or for any other purpose, nor does Panda make or purport to make any contract for the carriage, storage, packing or handling of any goods with the Customer. Panda's sole obligation is to procure contracts for the carriage, storage, packing or handling of goods by other persons.

33. Panda shall not be liable to the Customer or the Owner for loss or damage to the goods resulting from:

- (a) fire, water, explosion or theft, however arising;
- (b) civil commotion, hostilities, sabotage, terrorist attack, chemical or biological contamination;
- (c) the acts of any public authority or imposition of any government sanction, embargo or similar action;
- (d) compliance with any law, judgment, order or decree;
- (e) any labor dispute, lock out or strike;
- (f) the interruption or failure of any utility services or network, and any systemic virus;

(g) the failure of any equipment, machinery or supplies and/or the shortage of or inability to obtain any fuel, power or supplies;

(h) circumstances which Panda could not avoid and the consequences of which it was unable to prevent;

(i) inherent vice and nature of goods.

Section II

34. Without prejudice to the exceptions and limitations contained herein, Panda shall be entitled to the benefit of all exceptions and limitations in favour of the carrier or other person storing or handling the

goods (such other person together with the carrier being hereinafter called "the Carrier"), contained in Panda's contract with the Carrier. The Customer will not seek to impose on the Carrier any liability greater than that accepted by the Carrier under such contract.

35. The liberties contained in clause 5 hereof and the provisions, exceptions and limitations contained in Clauses 1 and 6 to 33 hereof shall apply to this Section of these Conditions.

Section III

36. Notwithstanding the provisions of Sections I and II of these Conditions, Panda shall be entitled to perform all or part of the carriage, storage, packing or handling of the goods by itself or by any associated companies. This Section of these Conditions shall apply to any such case and also to any case where, notwithstanding Clause 34 of Section II, Panda is deemed to be the Carrier or otherwise to be in possession of the goods. This Section of these Conditions shall apply only so long as and to the extent that Panda is or is deemed to be the Carrier or in possession of the goods as aforesaid, and no further.

37. Panda shall be entitled:

(a) to carry the goods by any route or by any means; and

(b) to store, pack or handle the goods at any place or places and for any length of time and to do all such other acts as may be necessary or incidental thereto at the absolute discretion of Panda and to depart from the Customer's interests.

38. The liberties contained in Clause 5 and the provisions, exceptions and limitations contained in Clauses 1 and 6 to 33 hereof shall apply to this Section of these Conditions.

39. Where Panda is or is deemed to be the Carrier under a contract subject to legislation compulsorily applicable thereto, Panda shall be entitled to all the rights, immunities, exceptions and limitations conferred on the Carrier by virtue of such legislation and these Conditions shall be void to the extent that they are inconsistent with such rights, immunities, exceptions and limitations, but no further. Without limiting the foregoing, where Panda is or is deemed to be the carrier, the carriage of goods will be at "limited carrier's risk" for the purposes of the Carriage of Goods Act.

Section IV

40. At Panda's request, the Customer must promptly execute any documents and do anything else required by Panda to ensure that any security interest created by these Conditions or arising from the exercise of any right or power hereunder constitutes a perfected security interest (as that term is defined in the Personal Property Securities Act) over the goods. The Customer must also provide Panda with any information Panda may reasonably require to complete a financing statement or a financing change statement.

41. Panda may hold personal information about the Customer, including information about the Customer's use of any of the Services. Panda can share this information with its associated companies and agents. This is so Panda can provide services to the Customer and others, maintain and improve the quality of its services and invoice the Customer. Panda may seek from any person or supply to any person information concerning the Customer's credit or business standing, and the Customer agrees to direct any such person to supply or receive such information.

42. The Customer may not transfer or assign any benefit or obligation under these Conditions to any third party without Panda's prior written consent.

43. If Panda fails or delays in the exercise of any right or power under these Conditions, this will not be a waiver of that right or power. Any failure or delay will not prevent Panda exercising that right or power in the future.

44. Any notice under these Conditions will be sufficiently given if it is in writing and delivered personally or sent by prepaid post or facsimile to the last postal address or fax number the Customer has given Panda. Notices will be deemed received in the case of personal delivery upon delivery as shown by the courier's receipt, in the case of facsimile upon production of a transmission report by the machine from which the facsimile was sent in its entirety to the correct facsimile number, and in the case of post three days following the date of posting.

45. If any provision of these Conditions is invalid, enforceability of the remaining provisions shall not be affected.

46. Where in these Conditions any matter is to be determined in accordance with the opinion of Panda, the certificate of a Director or the Manager of Panda for the time being shall be conclusive evidence as to any matter so certified.

47. Reference to a statute, regulation or provision of a statute or regulation ("**Statutory Provision**") includes that Statutory Provision as amended or re-enacted from time to time and a statute, regulation or provision enacted in replacement of that Statutory Provision. Any reference to a Statutory Provision shall be to that Statutory Provision under United States law.

48. These Conditions, and any act or contract to which they apply, shall be governed and construed by the law of United States and no proceedings in respect of any matter or thing shall be instituted except in United States.