

## **Shanghai (Export) Container Capacity Delivery Contract of Shanghai Shipping Freight Exchange Co., Ltd.**

(Prepared in February 2014,)

This Contract is prepared by the Shanghai Shipping Freight Exchange Co., Ltd. ("SSEFC") according to the "SSEFC Trading Rules" and "Detailed Rules for the Settlement of Capacity of SSEFC ". The buyer (Party A) and the seller (Party B) must abide by this Contract.

Whereas:

1. Party B has rich experience in the areas of international cargo transportation and export cargo booking services;
2. Party A intends to entrust Party B to book export cargo space and to arrange related services;

Thus, both parties have agreed to be bound by the following terms in accordance with the principles of fairness, reasonableness, and mutual benefits, under the laws and regulations of the People' s Republic of China:

### **1. Scope of Services**

- 1.1 Party B will assist Party A in all matters in relation to the shipping of export containers.
- 1.2 Specific information such as the name of export items, quantity, size, and loading and unloading port information shall be as per the information set out in the booking note confirmed by both parties.

## 2. Rights and Obligations of Party A

2.1 Party A shall fill out the names of items, quantity, quality, loading and unloading port and other contents accurately according to the booking note in form and substance requested by Party B. Party A shall be solely responsible for any loss or damage occurred as a result of, or in connection with, any inaccurate information filled out by Party A or omitted information.

2.2 Party A shall deliver the booking note to Party B according to the estimated sailing schedule, but in any event no later than the shipping company's cut-off date for receiving orders. Party B shall cooperate with Party A as per Party A's requirements if extra loadings are needed after the said cut-off date, but shall not bear any responsibility for any failure to meet such requirements.

2.3 After Party B's receipt of the booking note from Party A, Party A is entitled to make changes to the booking note by submitting an amended note in writing. However, such amended note must be submitted three (3) days before loading, dated and stamped with Party A's seal. Party A shall be solely responsible for any and all costs and liabilities resulting from, or in connection with, any amendment made to the booking note.

2.4 Party A is responsible for the packaging of the goods. All packaging shall be suitable for ocean shipping or the special attributes of the goods, and in accordance with the standards stipulated by the relevant authorities. Further, the external surface of the packaging must be clearly marked with handling, storage, protection and other requirements. If Party A has special requirements in respect of the storage, protection or shipping of goods, Party A shall clearly set out such requirements on the booking note. Party B shall not be responsible for any loss or damage to goods that occurs during transportation if the cargo packaging by Party A is not suitable for ocean shipping or the special attributes of the goods, or is not in compliance with the standards stipulated by the relevant authorities. Also, Party A shall be solely responsible for any loss or damage caused to third parties by faulty goods or improper packaging.

2.5 The goods from Party A which are the subject of the export bookings arranged by

Party B shall not contain any inflammable, explosive, toxic, corrosive, and radioactive articles, or any goods prohibited for export under State regulations. Party A shall truthfully declare the names of goods and other information, and shall bear any and all responsibilities resulting from any untruthful declaration. If shipments involve hazardous materials, Party A shall determine the hazard level and inform Party B in writing. Party A shall bear all costs, losses and liabilities caused by, or in connection with, any hazardous materials, regardless of whether such materials are listed under the International Maritime Dangerous Goods Code, or whether Party A has made a dangerous goods declaration.

2.6 Party A shall pay all fees and expenses in accordance with the terms of this contract.

### **3. Rights and Obligations of Party B**

3.1 Party B shall perform its duties, and maintain Party A' s legitimate rights and interests.

3.2 Party B shall provide information regarding the estimated sailing schedule and the shipping company' s cut-off date for receiving orders to Party A without delay. However, the above-mentioned sailing schedule shall not constitute the specific time of the vessel leaving and arriving the port, and shall only act as a reference for both parties in respect of the handling of booking matters.

3.3 Upon Party B' s receipt of bookings from Party A, Party B shall conduct stowage and other relevant procedures with liner companies within a reasonable period of time. Unless Party A can prove that Party B is at fault in stowage or selecting the carrier, Party B shall not undertake any responsibility. If the goods cannot be stowed according to schedule, Party B shall promptly notify Party A without delay.

3.4 In order to protect Party A' s legitimate interests, Party B is allowed to, without Party A' s special authorization, advance on behalf of Party A related shipping fees to the shipping company, and port fees and other relevant expenses to the port authority and other relevant departments.

3.5 For the export of goods under prepaid freight terms, regardless of whether the carrier has an obligation to issue a bill of lading directly to Party A as per Party A' s

requirements according to the law of the People' s Republic of China or the governing law of the relevant contract of carriage, Party A shall authorize Party B to accept the bill of lading on its behalf. Further, Party A acknowledges that Party B has the right to retain all the bills of lading until all advance payments made by Party B, if any, are settled by Party A, and that Party A shall bear full responsibility for any loss or liability resulting therefrom.

#### **4. Payment Methods**

- 4.1 The freight settlement methods are to be decided by both Parties.
- 4.2 Party A shall be responsible for paying shipping fees to either Party B or the shipping company.
- 4.3 Party A shall be responsible for paying port fees and other relevant expenses to the port authority and other relevant departments.
- 4.4 Upon receipt from Party B of the invoices for port fees and other related expenses, Party A shall fully settle such invoices by making payments to Party B' s designated bank account within three (3) working days.
- 4.5 If Party B has advanced on behalf of Party A port fees and other relevant expenses to the relevant departments pursuant to clause 3.4, then Party A shall settle such advancements by making payments to Party B' s designated back account within three (3) working days of receipt of the relevant invoices from Party B.
- 4.6 Party A shall pay Party B' s agent fee to Party B' s designated bank account within three (3) working days of receipt of the relevant invoice. Other fees and charges must be determined in accordance with the usual standards, without any discrimination.

#### **5. Confidentiality**

- 5.1 Confidential information refers to any undisclosed information that involves or

relates to the parties of this Contract, including but not limited to the following information or any part of it: business operation, marketing channels, procedures, standards, pricing and other financial records, etc. of any party to this Contract; any authorized contract, agreement, memos, attachment, draft or record (including this Contract) by any party for the purpose of this Contract; or any party' s undisclosed information provided to the other party for the purpose of this Contract.

5.2 Except for the circumstance as described in clause 5.3, neither party of this Contract shall disclose any confidential information in any manner to any third party. Likewise, no facts of signing, performance and other situations relating to this Contract shall be disclosed to the public and media in any manner.

5.3 Neither party shall be liable for the disclosure or divulgence of confidential information if:

- a. the confidential information has become public knowledge before divulgence (save for information divulged in breach of this confidentiality provision).
- b. the disclosure is made with the prior written consent of all parties to this Contract.
- c. the confidential information is disclosed to a party' s professional advisors for the purpose of this Contract and such advisors have agreed to keep the confidential information confidential.
- d. the disclosure is required by law, order or government departments. However, any disclosure requests from government departments must be issued in the form of a formal written request; otherwise a party shall reject such requests and shall not disclose or divulge any confidential information.

5.4 Either party shall adopt the necessary measures to confine knowledge or understanding of confidential information to the relevant employees, agents or advisers, and require them to strictly abide by this clause 5 and not to divulge any confidential information to any third party. Either party undertakes not to disclose or divulge any confidential information obtained from the other party to unrelated employees.

5.5 Either party shall notify the other party of this Contract if it discloses confidential information to a third party in accordance with clause 5.3.

5.6 A party of this Contract shall compensate the losses of the other party if the first party is in breach of this clause 5.

5.7 This confidentiality clause shall survive the termination of this Contract. All parties to this Contract shall keep confidential all confidential information for at least one year commencing from the date of obtaining such confidential information.

## **6. Force Majeure**

6.1 Force majeure refers to any conditions, circumstances or affairs beyond any party' s control in this Contract, which is unforeseeable, unavoidable and insurmountable including but not limited to earthquake, typhoon, tsunami, flood, fire and other natural disasters, war, riot and curfew, and other objective circumstances that are beyond the control of the affected party.

6.2 If a party is unable to fulfill its obligations under this Contract due to a force majeure event, it shall promptly notify the other party and produce adequate evidence of such force majeure event. In addition, it shall take reasonable measures to minimize the influence of the force majeure event, and to resume performance of this Contract as soon as practicable.

6.3 In case of a force majeure event, neither party shall be liable to the other party for any loss arising from the failure to perform, or delay in the performance of, this Contract, which failure or delay shall not constitute a breach of this Contract.

6.4 In case of a force majeure event, the time for the performance of this Contract may be extended in accordance with the development of the circumstances. If such force majeure event has resulted in one party not being able to perform its obligations for more than five (5) days, and in the interests of either party being harmed by such inability, then the latter party shall have the right to terminate this Contract .

## 7. Liability for Breach of Contract

If a party fails to perform its obligations under this Contract or fails to perform its obligations in accordance with the terms of this Contract, it shall be responsible for, among other things, the continued performance of the obligations, taking remedial measures, or any loss or damage resulting therefrom.

### 7.1 Party A' s liability for breach of contract

- a. If Party A delays the payment of any fees in breach of clause 4 of this Contract, Party A shall pay Party B a penalty in an amount equal to 0.05% of the outstanding amount for each day of delay. In addition, if Party A fails to pay any fees in accordance with the terms of this Contract, Party B has the right to retain the corresponding shipping documents, with any resulting loss and liability to be borne by Party A.
- b. Party A shall bear any loss and/or liability incurred by or caused to Party B and/or any third party as a result of goods not being stowed according to schedule, or for loss of or damage to goods in breach of clause 2 of this Contract.
- c. Party A shall be liable to Party B for any loss and/or liability caused by its failure to perform in accordance with the terms of this Contract, or the non-performance of, its obligations under this Contract.

### 7.2 Party B' s liability for breach of contract

- a. Party B shall carry out its duties diligently and responsibly when arranging the transportation of goods for export for Party A, and shall be liable to Party A for any direct loss and additional cost incurred by Party A as a result of Party B' s intentional misconduct or gross negligence. However, Party B' s such liability shall not include any economic loss caused by delays in shipment or any other loss that cannot be reasonably foreseen at the time of executing this Contract.
- b. Party B shall be liable to Party A for any loss and/or liability caused by its failure to perform in accordance with the terms of this Contract, or the

non-performance of, its obligations under this Contract.

## 8. General

8.1 Effectiveness: The terms of this Contract, together with the "Trading Rules", "Detailed Trading Rules", "Detailed Settlement Rules", "Detailed Capacity Delivery Rules" and other relevant detailed rules, constitute all the terms in relation to the liability and obligations of traders of SSEFC. And this Contract, which is automatically converted from an electronic copy of the capacity trading contract that has been signed by both parties with an electronic signature during the process of capacity settlement, shall come into force and effect immediately upon completion of the settlement and matching of capacity .

8.2 Governing law: The conclusion, validity, interpretation, modification, performance and termination of, and the resolution of any dispute under, this contract shall be governed by and construed in accordance with the laws of the People' s Republic of China.

8.3 Dispute resolution: The parties shall refer any dispute that arises during the performance of this Contract to the China Maritime Arbitration Commission Shanghai Branch for arbitration.

Shanghai Shipping Freight Exchange Co., Ltd.

This Contract is executed in Chinese and English versions, with both versions bearing equal legal effect. To the extent of any conflict or inconsistency between the English version and Chinese version, the Chinese version shall prevail.