

Through Transport Club Conditions Series 850
CONDITIONS FOR USE BY RAIL FORWARDERS IN CHINA

Definitions

1 In these conditions

Agree/agreed/agreement means agree/agreed/agreement in writing
Authority means a duly constituted legal or administrative person, acting within its legal powers and against its jurisdiction within any nation, state, municipality, port or airport

Carriage means the whole or any part of the operations and services of whatsoever nature undertaken by the Company in relation to the Goods, including but not limited to the loading, unloading, storage, warehousing and handling of the Goods

CIM (COTIF) means the Convention and Uniform Rules concerning International Carriage by Rail as amended by the Vilnius Protocol 1999
Company is AIR SEA TRANSPORT INC.
Container includes, unless otherwise indicated, any vehicle, container, flat, pallet, trailer, transportable tank and similar items used for the consolidation of Goods as well as mobile plant and timber packages

Customer means any person, whether themselves an agent or a principal, at whose request or on whose behalf the Company provides a service
Dangerous Goods includes Goods that are or may become a dangerous, inflammable, radioactive or flammable nature, Goods liable to taint or affect other Goods and Goods likely to harbour or encourage vermin or other pests

Goods includes the cargo and any container not supplied by or on behalf of the Company, in respect of which the Company provides a service
Hague-Visby Rules means the Hague Rules as amended by the Protocol signed at Brussels on 23 February 1968

Instructions means any instruction of the Customer's specific requirements
Load Units means freight containers, swap bodies and semi-trailers
Montreal Convention means the Convention for the Unification of Certain Rules for International Carriage by Air, done at Montreal on 28 May 1999
Owner includes the owner, shipper and consignee of the Goods and any other Person who has or may have a legal or equitable relationship to the Goods at a relevant point of time and anyone acting on their behalf

Person includes person or persons acting in concert
SMGS means Agreement on International Goods Transport by Rail in force from 1 November 1951 and subsequent amendments
Warsaw Convention means whichever of the following instruments is applicable to the contract of carriage:

- (a) the Convention for the Unification of Certain Rules Relating to International Carriage by Air, signed at Warsaw on 12 October 1929
- (b) that Convention as amended at The Hague on 28 September 1955
- (c) that Convention as amended at The Hague 1955 and by Montreal Protocol No. 1, 2, or 4 (1975) as the case may be

Application

2 (a) All services and activities of the Company in the course of business of the Company whether gratuitous or not are subject to these Conditions.

(b) Where a document bearing a title of or including "consignment note", "bill of lading" (whether or not negotiable) or "waybill" is issued by or on behalf of the Company and provides that the Company contracts as carrier, the provisions set out in the document will be paramount insofar as they are inconsistent with these Conditions

(c) Every variation, cancellation or waiver of these Conditions must be in writing signed by a director of the Company. No other person has authority to agree to any variation, cancellation or waiver

Company as Agent

3 All services and activities are provided by the Company as agents except in the following circumstances where the Company acts as principal:

(a) where the Company, or its servants, themselves perform any carriage, handling or storage of Goods and the Goods are in the actual custody and control of the Company

(b) where prior to the commencement of the carriage, handling or storage of the Goods the Customer has written demands to incorporate the particulars of persons instructed by the Company to perform part or all of the carriage and the Company fails to give these particulars demanded within 28 days

(c) to the extent that the Company expressly Agrees to act as a principal
(d) to the extent that the Company is held by a court to have acted as a principal

4 Without prejudice to the generality of clause 3:

(a) The following are not in themselves evidence whether the Company is acting as an agent or a principal:

- (i) charging by the Company of a fixed price
- (ii) supplying by the Company of its own or leased equipment
- (iii) The Company acts as an agent:

(i) where the Company procures a consignment note, bill of lading or other document constituting or evidencing a contract of carriage between a person, other than the Company, and the Customer or Owner

(ii) when providing services in respect of or relating to customs requirements, taxes, licenses, consular documents, certificates of origin, inspection, certificates and other similar services

5 To the extent that the Company acts as an agent, the Company does not make any contract with the Customer for the carriage, storage or handling of the Goods nor for any other service in relation to the Goods and acts solely on behalf of the Customer in securing such services by establishing contracts with third parties so that direct contractual relationships are established between the Customer and the third parties. The Company will not be liable for the acts and omissions of the third parties
6 The Company when acting as an agent has the authority of the Customer to enter into contracts on the Customer's behalf and to bind the Customer by the contracts, notwithstanding any departure from the Customer's instructions

7 Except to the extent caused by the Company's negligence, the Customer will defend, indemnify and hold harmless the Company in respect of all liability, loss, damage, costs or expenses arising out of any contracts made in the procurement of the Customer's requirements in accordance with clause 6

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

Company as Principal

9 To the extent that the Company contracts as principal, the Company undertakes to perform, or in its own name to procure the performance of, the Customer's instructions and subject to the provisions of these Conditions will be liable for the loss of or damage to the Goods occurring from the time that the Goods are taken into its charge until the time of delivery

Obligations of Customer

10 The Customer warrants that it has reasonable knowledge of its business, including (without limitation) the terms of sale and purchase of the Goods

11 The Customer warrants that it is either the Owner or the authorised agent of the Owner of the Goods and that it is authorised to act for itself and as agent for the Owner of the Goods

12 The Customer will give sufficient and executable instructions

13 The Customer warrants that:

(a) the description and particulars of the Goods are complete and accurate
(b) the Customer has correctly stated the number and type of wagons or Load Units required for rail transport

(c) the Goods are properly packed, marked, labelled and stowed, except where the Company has accepted instructions in respect of these services

14 The Customer is responsible for loading and unloading, unless otherwise Agreed. The Company may inspect wagons and Load Units to ensure that they are safely loaded. If loading times are exceeded, the Company may charge demurrage on the terms set out in the consignment note or in the Company's conditions, which are available to the Customer, on the Company's website or otherwise

15 The Customer will ensure that Load Units conform to applicable legal requirements and are suitable for Goods being carried. Before loading the Customer will check the wagons and Load Units supplied for suitability for the intended purpose and visible defects and notify the Company of any unsuitability or defects

16 The Customer will make out a CIM/SMGS consignment note, or shipping instructions in accordance with the specimen attached to these Conditions

17 The Customer will use wagons and Load Units supplied by the Company

only for purposes set out in these Conditions

18 The Customer will ensure that wagons and Load Units are returned at the specified time and place, fit for re-use, including (without limitation) that the wagons and Load Units are empty, disinfected or cleaned and with all unattached components

19 (a) The Customer and Owner will defend, indemnify and hold harmless the Customer or Owner against all liability, loss, damage, costs and expenses arising from:

(i) the nature of the Goods unless caused by the Company's negligence

(ii) the Company's acting in accordance with the Customer's or Owner's instructions,

(iii) any breach by the Customer of these Conditions

(iv) the Customer's or Owner's negligent or willful discretion of

(b) Except to the extent caused by the Company's negligence, the Customer and Owner will be liable for and will defend, indemnify and hold harmless the Company in respect of all duties, taxes, deposits and outlays of whatever nature levied by an Authority in respect of the Goods and for all liabilities, payments, fines, costs, expenses, loss and damage incurred by the Company in connection with this

(c) Advice and information in whatever form is provided by the Company to the Customer or Owner only. The Customer will not pass such advice or information to any third party without the Company's written Agreement and the Customer will indemnify the Company against any loss suffered as a result of a breach of this condition

20 The Customer will be liable for damage to wagons and Load Units caused by the Customer or by any third party with whom the Customer contracts, including consequential losses, including (without limitation) losses arising from the total loss of use. The Customer will report to the Company immediately any damage or accident

Dangerous Goods

21 (a) Unless otherwise previously Agreed, the Customer will not deliver to the Company or cause the Company to carry, store or handle Dangerous Goods

(b) If the Customer is in breach of clause 21(a), the Goods may without notice be destroyed or otherwise dealt with at the discretion of the Company or any other person in whose custody they may be

(c) If the Company Agrees to accept Dangerous Goods and then, in the opinion of the Company or any other person, they constitute a risk to other Goods, property, life or health they may without notice be destroyed or otherwise dealt with at the expense of the Customer or Owner

Temperature Controlled Goods

22 (a) The Customer warrants that it will not tender for carriage, storage or handling any Goods that require temperature control without previously giving written notice of their nature and particular temperature range to be maintained

(b) In the case of a temperature controlled Container stuffed by or on behalf of the Customer by a third party, the Customer further warrants that:

(i) The Container has been properly pre-cooled or preheated as appropriate

(ii) The Goods have been properly stuffed in the container

(iii) its thermostatic controls have been properly set

(c) The Company will not be liable for any loss of or damage to the Goods caused by non-compliance with clause 22(b)

Insurance

23 The Customer will not effect insurance except upon express instructions in writing by the Customer

(b) The Company is the agent of the Customer in respect of effecting insurance

(c) Unless otherwise Agreed, the Company will not be under any obligation to effect a separate insurance on each consignment but may declare it on any open or general policy

(d) If the Customer has no liability for any reason the Customer will have recourse against the insurers only

Declaration of Value

24 The Company is not obliged to make any declaration for the purposes of any statute, convention or contract as to the nature or value of any Goods, or as to any special interest in delivery, unless the Company has received express written instructions to that effect. If such instructions are accepted, the Company is entitled to ask for extra freight or cost to be paid. In such case, if the actual value of the Goods shall exceed such declared value, the value shall nevertheless be deemed to be the declared value and the Company's liability, if any, shall not exceed the declared value and any partial loss or damage shall be adjusted pro rata on the basis of such declared value.

Delivery

25 Unless otherwise previously Agreed, or otherwise provided for under the provisions of a document signed by the Company, instructions relating to the delivery or release of Goods against payment or against surrender of a particular document will be in writing. The Company's liability resulting from these will not exceed the liability applying in respect of misdelivery of Goods

26 Unless otherwise previously Agreed that the Goods will depart or arrive by a particular date, the Company accepts no responsibility for departure or arrival dates of Goods, whether or not any such delay is caused by the negligence of the Company or its servants or agents

Charges

27 (a) Quotations are given on the basis of immediate acceptance and are subject to the right of withdrawal or revision if any changes occur in the rates of freight, insurance premiums or other charges applicable to the Goods

(b) The Customer will pay to the Company all sums immediately when due without reduction for any claim, counterclaim or set off

(c) When the Company is instructed to collect freight, duties, charges or other expenses from any person other than the Customer, the Customer will be responsible for the same on receipt of evidence of demand and non payment by such other person when due

(d) On all amounts overdue to the Company, the Company will be entitled to interest, calculated on a daily basis from the date the amount is overdue at 0.7% per month

Liberties and Rights of Company

28 The Company may, unless otherwise Agreed, enter into contracts on behalf of itself or the Customer and without notice to the Customer for carriage, storage, packing, transhipment, loading, unloading or handling of Goods and act as, in the opinion of the Company, may be necessary for the performance of the its obligations

29 The Company may park Load Units in the open

30 (a) The Company may, but is not obliged to, depart from the Customer's instructions if in the opinion of the Company there is good reason to do so in the Customer's interest

(b) The Company may at any time comply with the orders or recommendations given by any Authority. The responsibility of the Company in respect of the Goods will cease on the delivery or other disposition of the Goods in accordance with such orders or recommendations

31 If at any time, in the opinion of the Company, the performance of the Company's obligations is likely to be affected by any hindrance, risk or delay, which cannot be avoided by reasonable endeavours, the Company may, on giving notice in writing to the Customer or Owner if reasonably practicable, treat the performance of its obligations as terminated and place the Goods at the Customer's or Owner's disposal at any place which the Customer deems safe and convenient. The Customer will be responsible for any additional costs of carriage, delivery and storage and for all other expenses incurred by the Company

32 If the Customer or Owner does not take delivery of the Goods at the time and place when and where the Company is entitled to call upon the Customer or Owner to do so, the Company may, without further notice, store the Goods in the open or under cover at the sole risk and expense of the Customer. Such storage will constitute delivery of the Goods and the liability of the Company will cease

33 Notwithstanding clauses 31 and 32, the Company may, but is under no obligation to, at the risk and expense of the Customer sell or dispose of the Goods:

(a) on giving 14 days notice in writing to the Customer which in the opinion of the Company cannot be delivered as instructed

(b) without notice, where Goods which have perished, deteriorated or altered, or are liable to do so, in a manner which has caused or may be

reasonably expected to cause loss or damage to any person or property or to contravene applicable regulations or requirements

34 The Company will have a particular and general lien on all Goods and documents in its possession for all sums due at any time from the Customer or Owner and on giving 14 days notice in writing to the Customer, will be entitled to sell by public auction or private treaty or dispose of the Goods against the expense of the Customer and apply the proceeds in or towards the payment of sums due

35 The Company is entitled to retain and be paid all brokerages, commissions, allowances and other remunerations customarily retained by or paid to freight forwarders

Containers

36 (a) If a Container has been packed or stuffed by or on behalf of the Customer, the Company will not be liable for loss of or damage to the Goods caused by:

(i) the manner in which the Container has been packed or stuffed

(ii) the unsuitability of the contents for carriage in the Container

(iii) the unsuitability or defective condition of the Container. If the Container is supplied by the Company this paragraph (ii) will only apply if the unsuitability or defective condition was not caused by negligence on the part of the Company or would have been apparent upon reasonable inspection at or prior to the time when the Container was packed or stuffed

(iv) the fact that the Container is not sealed at the commencement of the Carriage, except where the Company has Agreed to seal the Container

(b) Where the Company is instructed to provide a Container, in the absence of an Agreement to the contrary, the Company is not obliged to provide a Container of any particular type or quality

General Liability

37 (a) Unless otherwise provided in these Conditions, the Company is not liable for loss or damage arising from:

(i) the act or omission of the Customer or Owner or any person acting on their behalf

(ii) compliance with the instructions given to the Company by the Customer or Owner or any other person

(iii) insufficiency of the packing or labelling of the Goods except where this service has been provided by the Company

(iv) handling, loading, stowage or unloading of the Goods by the Customer or Owner or any person acting on their behalf

(v) inherent vice of the Goods

(vi) riots, civil commotions, strikes, lockouts, stoppage or restraint of labour

(vii) fire, flood or storm

(viii) any cause which the Company could not avoid and the consequences of which it could not prevent by the exercise of reasonable diligence

(ix) Any liability exempted under an applicable law, convention or treaty, including (without limitation) Rail Freight Transport Regulations of China (TIEYUN No 40 Article 59), SMGS and CIM (Articles 23 & 38).

(b) The Company is not liable for loss or damage to property other than the Goods themselves, however caused

(c) Subject to clause 26, the Company is not liable for any economic loss including (without limitation) indirect or consequential loss or damage, loss of profit, delay, deviation

38 If the Company acts as principal, and if it can be proved where the loss or damage to the Goods occurred, the Company's liability will be determined by the provisions contained in any international convention or national law, the provisions of which:

(a) cannot be departed from by private contract, to the detriment of the claimant, and

(b) would have applied if the claimant had made a separate and direct contract with the actual provider of the particular service

39 If any legislation is compulsorily applicable to any business undertaken, these Conditions shall remain in full force and effect notwithstanding this legislation and nothing in these Conditions will be construed as a surrender by the Company of any of its rights or immunities or as an increase of any of its responsibilities or liabilities under such legislation. If these Conditions are repugnant to this legislation to any extent, the Conditions will be overridden to this extent, but no further

40 If the Company acts as a principal in respect of a carriage of Goods by air, the Carriage will be subject to an ultimate destination or stop in a country other than the country of departure, the Montreal Convention or the Warsaw Convention may be applicable to the liability of the carrier in respect of loss of, damage or delay to cargo. The Conventions govern and in most cases limit the liability of carriers in respect of loss of or damage to cargo

41 The provisions of CIM (COTIF) apply to the services and activities of the Company, except to the extent that this is inconsistent with any provision in these Conditions, including (without limitation):

(a) Clauses 3-5 (Company acting as agent)

(b) Clauses 38-39 (Compulsory application of conditions)

(c) Clause 42 (Amount of compensation)

Amount of Compensation

42 Unless otherwise provided by these Conditions, the liability of the Company will not exceed the following

(a) in respect of all claims other than those subject to clause 42(b), the lesser of:

(i) the value as defined at clause 43

(ii) USD 2 per gross kilogramme, and

(iii) the limit specified in Rail Freight Transport Regulations of China (TIEYUN No 40) Article 56 where the Regulations apply of the Goods lost, damaged, misdirected, misdelivered or in respect of which a claim arises

(b) In respect of claims for delay the Company's charges in respect of the Goods delayed

43 Compensation is calculated by reference to the ex works invoice value of the Goods plus carriage charges and insurance if paid. If there is no invoice value, compensation is calculated by reference to the value of the Goods at the place and time when they are delivered to the Customer or Owner or should have been so delivered, fixed according to the current market price

44 By Agreement and on payment of additional charges, higher compensation may be claimed from the Company not exceeding the value of the Goods or the agreed value, whichever is the lesser

45 The defences and limits of liability provided for by these Conditions will apply in any action against the Company, whether founded in contract or tort

Notice of Loss, Time Bar

46 The Company will be discharged of all liability unless:

(a) (i) notice of any claim is received in writing by the Company within 14 days after the date specified at clause 46(c), except where the Customer can show that it was impossible to comply with this time limit and that the claim has been made as soon as reasonably possible and

(ii) suit is brought in the proper forum and written notice is received by the Company within nine months after the date at clause 46(c),

(b) in the case of claims for delay the Company's charges in respect of the Goods delayed

(c) where the Company responds to the Customer's claim, the Customer replies to the Company's response within 60 days of having received it

(d) Where a law, convention or treaty, including (without limitation) Rail Freight Transport Regulations of China (TIEYUN No 40), SMGS or CIM, applies and specifies a period shorter than any period specified at clause 46(a), this shorter period will prevail over the period specified at clause 46(a)

(e) The date referred to at clause 46(a) is:

(i) in the case of loss or damage to Goods, the date of delivery of the Goods

(ii) in the case of delay or non-delivery of the Goods, the date that the Goods should have been delivered

(iii) in any other case, the event giving rise to the claim

Jurisdiction and Law

47 These Conditions are subject to Chinese law. Any dispute relating to the Conditions will be submitted to the Chinese courts

Miscellaneous

48 Headings of clauses or groups of clauses in these Conditions are for indicative purposes only

49 If any provision in these Conditions is found to be unenforceable, the remainder of the Conditions will remain unaffected