



# **Bolloré Logistics Philippines Inc.**

## **Standard Terms and Conditions of Sale**

**Bolloré Logistics Philippines Inc.**

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## 1. Definitions and Interpretation

1.1. In these Conditions, the following terms, except where the context otherwise requires or where it is otherwise stated, shall have the following meanings:

**“Affiliate”** means any legal entity that directly or indirectly controls another entity via beneficial ownership of more than fifty per cent (50%) of voting powers or equity in another entity (“Control”), or is Controlled by another entity or is under common Control with another entity, so long as such Control exists.

**“Authority”** means a duly constituted legal or administrative person or institution acting within the scope of its legal powers and exercising jurisdiction within any nation, state, municipality, port or airport.

**“Bolloré Logistics”** means Bolloré Logistics Philippines Inc., its nominees, agents and employees.

**“Carrier”** means a person, organisation, company or corporation that undertakes the direct and actual carriage, storage, packing, unpacking, (local) transportation, trans-shipment, loading, unloading and/or other handling of the goods or cargo by means of air, land or sea through the use of a vehicle, vessel or other means of transport. The term carrier shall not include persons, organisations or corporations which undertakes (i) the hiring or contracting of such carrier; (ii) the facilitation of transport documents; and/or (iii) the processing of the cargo or transportation documents.

**“Conditions”** mean the present Standard Terms and Conditions of Sale.

**“Confidential Information”** means any and all information, results, data, know-how, intellectual property and materials, whether written or verbal, tangible or intangible, relating to these Conditions or to negotiations preceding the acceptance of these Conditions, including without limitation all information relating to the current or future business strategies, operations, situation, methods, pricing, property and interests of the Parties, and excluding any such information to the extent that it:

- (i) is or becomes generally available to the public except if it results from a disclosure by the receiving Party;
- (ii) becomes lawfully available to the receiving Party on a non-confidential basis from a third-party which is under no obligation of confidentiality or non-use towards the disclosing Party;
- (iii) was developed by the receiving Party independently of any disclosure by the disclosing Party or was lawfully known to the receiving Party prior to its receipt from the disclosing Party without any obligation of confidentiality or restricted use, as shown by contemporaneous written evidence;

(iv) is released by the disclosing Party to a third party without restriction;  
or

(v) is required by law or regulation to be disclosed, provided that the receiving Party promptly informs the disclosing Party of such requirement.

**“Container”**

means a freight container (including without limitation any container, flexitank, trailer, transportable tank, flat, pallet or any article used to consolidate goods) which may carry unique identification numbers and markings, as well as any equipment (including devices which permit its ready handling) forming part thereof or connected thereto.

**“Customer”**

means any person or legal entity ordering the Services from Bolloré Logistics.

**“Dangerous Goods”**

mean goods that include:

- (i) dangerous goods listed under the International Maritime Dangerous Goods Code issued by the International Maritime Organization (IMO);
- (ii) goods which are or may become of a dangerous, inflammable or radio-active character or damaging to itself or other property, or goods dangerously packed, or goods likely to harbour or encourage vermin or other pests, or goods which, owing to legal, administrative or other obstacles as to their carriage, discharge or otherwise, may be detained or cause any other property or person to be detained;
- (iii) empty receptacles which were previously used for the carriage of Dangerous Goods unless such receptacles have been rendered safe; and
- (iv) goods which are considered to be dangerous or hazardous by any Authority.

**“Delay”**

shall be said to occur when the Goods have not been delivered within the agreed time limit, or when, in the absence of any agreed time limit, the actual transport duration exceeds the time which would be reasonably given to a diligent freight forwarder or carrier in similar circumstances.

**“Force Majeure”**

means any cause or circumstance beyond the reasonable control of a Party which prevents or impedes due performance of its obligations hereunder, including but not limited to change of law, war or hostilities, riots or civil disturbance, Acts of God, fire, explosion, typhoons, storms, flood, earthquakes, extreme weather conditions, act of terrorism, piracy, the act of any government or Authority (including refusal or revocation of any license or consent), denial of the use of airport, port congestion, lockout or industrial action of any kind, power failure, failure of telecommunication lines, failure or breakdown of plants, machineries or vehicles, theft, malicious damage, strike, default of shipper or consignee or their agents,

and any other cause or circumstance beyond the reasonable control of a Party.

**“Goods”** mean the cargo in relation to which the Services are provided by Bolloré Logistics and includes any Container, packaging or pallet supplied by or on behalf of the Customer.

**“Insolvency Event”** means any circumstances in which the Customer is unable to pay any amounts that have become due and payable, including liquidation, bankruptcy, official management, administration, merger, amalgamation, reconstruction, winding-up, dissolution, deregistration, assignment for the benefit of creditors, scheme, compromise, composition or arrangement with creditors, insolvency, or a similar procedure or, where applicable, changes in the constitution of any partnership or person, or death.

**“Legislation(s)”** and **“Convention(s)”** shall include the laws and regulations of the Philippines and international conventions, including, without limitation, for international sea transportation, the Hague Rules (1924), the Hague-Visby Rules (1968), the Hamburg Rules (1978), the Rotterdam Rules (2009); and for international air transportation, the Warsaw Convention (1929) and the Montreal Convention (1999).

**“Owner”** means the owner of the Goods and can be the shipper, the consignee or any other person who is or may become interested in the Goods and anyone acting on its behalf.

**“Party”** or **“Parties”** means Bolloré Logistics and/or the Customer.

**“Quotation”** means the quotation issued by Bolloré Logistics for its Services.

**“Special Drawing Rights”** or **“SDR”** means the unit of monetary value or compensation as determined by the International Monetary Fund. The value of SDR shall be calculated at the date of settlement or judgment.

**“Services”** mean any business undertaken or any advice given or any information provided by Bolloré Logistics to the Customer, including without limitation services relating to the transport by road, sea or air, international freight forwarding, forwarding agency, shipping agency, customs brokerage, logistics and warehousing services, consignment, storage, handling, consolidation, packing, inspection, stevedoring or distribution of the Goods.

**“SOLAS Convention”** means the Convention on the Safety of Life At Sea signed on 1 November 1974, as amended in November 2014.

**“Transportation Services”** mean the carriage of Goods by road, sea and/or air, and covers the period from the time preparations are being made by Bolloré Logistics or its agents or subcontractors for the Goods to be transported to the time the Goods are delivered by Bolloré Logistics to the consignee or its agent or a party instructed by the Customer to receive the Goods.

**“Warehousing Services”** mean the storage, the packaging and any other value-added Services of the Goods by Bolloré Logistics or its agents or subcontractors.

- 1.2. Where applicable, words importing the singular include the plural and vice versa. Words importing a gender include every gender. References to persons include bodies corporate and unincorporated.
- 1.3. Clause headings are inserted for convenience of reference only and shall be ignored in the interpretation of these Conditions.
- 1.4. Any reference to any statute shall be deemed also to refer to any statutory modification or re-enactment thereof and all statutory instruments, orders or regulations made under such statute.

## 2. General Principles

- 2.1. The purpose of these Conditions is to set forth the terms of performance of the Services by Bolloré Logistics for the Customer.
- 2.2. Any transaction between the Customer and Bolloré Logistics, either by acknowledgement or commencement of the Services, shall be governed by these Conditions.
- 2.3. Bolloré Logistics is not bound by the Customer’s standard terms and conditions of purchase. Course of dealing and industry practice, shall not modify these Conditions.
- 2.4. Bolloré Logistics is not a carrier and shall not assume such obligations and liabilities, to the extent permitted by applicable Legislation.
- 2.5. Bolloré Logistics shall have the right to enforce against the Customer and its principal (if any) jointly and severally any liability and sums payable under these Conditions.
- 2.6. Bolloré Logistics acts as principal only in the following circumstances:
  - 2.6.1. when the Goods are actually carried, transported, handled or stored by Bolloré Logistics or its subcontractors and the Goods are under its actual control or custody;
  - 2.6.2. when Bolloré Logistics issues a transport document in respect of the Goods as carrier; or
  - 2.6.3. when Bolloré Logistics has expressly agreed in writing to act on its own behalf.
- 2.7. Without prejudice to Clause 2.6,
  - 2.7.1. the charging by Bolloré Logistics of an inclusive price for any Services shall not in itself determine that Bolloré Logistics is acting as a principal in respect of such Services; and
  - 2.7.2. the supply by Bolloré Logistics of its own or leased equipment and/or facilities, shall not in itself determine that Bolloré Logistics is acting as a principal in respect of such Services.

2.7.3. Bolloré Logistics acts solely as agent when it issues a bill of lading or any other document evidencing a contract of carriage between a third party and the Customer or Owner.

2.7.4. Bolloré Logistics acts solely as agent for the Services in respect of or relating to customs clearance, taxes, licenses, consular documents, certificates of origin, inspection, certificates, notarization and other similar services or incidental to these services.

2.8. If any Legislation is compulsorily applicable to any Services, these Conditions shall as regards such Services be read as subject to such Legislation and nothing in these Conditions shall be construed as a surrender by Bolloré Logistics of any of its rights or immunities or as an increase of any of its responsibilities or liabilities under such Legislation. If any part of these Conditions is repugnant to such Legislation to any extent such part shall as regards such Services be void to that extent but no further.

### 3. Bolloré Logistics' obligations

Bolloré Logistics shall:

- 3.1. comply with all applicable Legislation governing the performance of the Services;
- 3.2. exercise the degree of skill, diligence and prudence that would ordinarily be used in the industry for such Services; and
- 3.3. not have the obligation to make any declaration, for the purpose of any Legislation or Convention or contract, as to the nature or value of the Goods or as to any special interest in delivery, unless in accordance with the Customer's written instructions.

### 4. Customer's obligations

The Customer shall:

- 4.1. warrant that it is either the Owner or the authorized agent of the Owner, and that it is authorized to accept and accepts these Conditions for itself and, if applicable, as agent for the Owner;
- 4.2. warrant that it has reasonable knowledge of the Goods and matters affecting the conduct of its business, including terms of sale and purchase and all other matters relating thereto;
- 4.3. give Bolloré Logistics sufficient information and documents which may be necessary for Bolloré Logistics to comply with the relevant Legislations and Conventions or otherwise perform the Services;
- 4.4. keep Bolloré Logistics fully informed of the exact nature and risks of the Goods, including without limitation their value, fragility, hazardous nature, possible deterioration, damage, liability to contaminate or affect other goods, property, persons or the environment, as well as any other specificities requiring special arrangements to be made;

- 4.5. declare to Bolloré Logistics the Verified Gross Mass of the Container pursuant to the SOLAS Convention;
- 4.6. warrant that the description and particulars of the Goods are complete and accurate. Bolloré Logistics shall have no duty to check the completeness or accuracy of such information or documents;
- 4.7. warrant that the Goods are properly and sufficiently prepared, packed, stowed, labelled and/or marked, and that the preparation, packing, stowage, labelling and marking are appropriate to any operations or transactions affecting the Goods and in particular to withstand the ordinary risks of handling, storage and carriage, unless Bolloré Logistics has agreed in writing to pack the Goods;
- 4.8. warrant that where Bolloré Logistics receives the Goods from the Customer already stowed in or on a Container, the Container is in good condition, and is suitable for the carriage of the Goods to the intended destination;
- 4.9. not deliver to Bolloré Logistics or cause it to deal with or handle illegal or prohibited goods, e.g. infringing products or narcotics, or restricted goods under export control regulations;
- 4.10. not deliver to Bolloré Logistics or cause it to deal with or handle any Dangerous Goods, unless otherwise previously agreed in writing by Bolloré Logistics;
- 4.11. not deliver to Bolloré Logistics or cause it to deal with or handle firearms, bullion, coin, precious stones, jewellery, valuables, antiques, pictures, human remains, livestock or plants, unless expressly agreed by Bolloré Logistics;
- 4.12. be responsible for inventory expiration of any of the Goods not attributable to the negligence of Bolloré Logistics and shall bear all costs and expenses relating to the disposal or removal of such expired Goods;
- 4.13. comply fully with all applicable laws and regulations that may apply to the Goods or Services under these Conditions.

## 5. Liberties and Rights

- 5.1. **Unless otherwise agreed in writing, the Customer authorizes Bolloré Logistics to enter into contracts on behalf of itself or the Customer and without notice to the Customer,**
  - 5.1.1. **for the carriage of Goods by any route, means or person;**
  - 5.1.2. **for the carriage of Goods, whether containerized or not, on or under the deck of any vessel;**
  - 5.1.3. **for the storage, packing, trans-shipment, loading, unloading or handling of Goods by any person at any place whether on shore or afloat and for any length of time;**



5.1.4. for the carriage or storage of Goods in Containers or with other Goods of any nature; and

5.1.5. for the performance of any of its own obligations.

5.2. Bolloré Logistics shall be entitled but not obliged to depart from the Customer's instructions in any respect if, in the sole opinion of Bolloré Logistics, there is good reason to do so in the Customer's interest. Bolloré Logistics shall not thereby incur any additional liability whatsoever.

5.3. Bolloré Logistics may at any time comply with the orders or recommendations given by any Authority. Bolloré Logistics shall not be liable for any loss or damage arising out of or in connection with compliance with such orders or recommendations.

5.4. If at any time the performance of Bolloré Logistics' obligations, in the sole opinion of Bolloré Logistics or any person whose services Bolloré Logistics makes use of, is or is likely to be affected by any hindrance, risk, delay, difficulty or disadvantage whatsoever and which cannot be avoided by Bolloré Logistics' or such other person's reasonable endeavours, Bolloré Logistics may, on giving notice in writing to the Customer or without notice where it is not reasonably possible to give such notice, treat the performance of its obligations as terminated and place the Goods or any part of them at the Customer's or Owner's disposal at any place which Bolloré Logistics may deem in its sole opinion safe and convenient, whereupon the responsibility of Bolloré Logistics in respect of the Goods shall wholly cease. The Customer shall pay on demand any additional costs of carriage and delivery to and storage at such places and all other expenses incurred by Bolloré Logistics.

5.5. If delivery of the Goods or any part thereof is not taken by the Customer or Owner at the time it is requested to do so by Bolloré Logistics or any person whose services Bolloré Logistics makes use of, Bolloré Logistics shall be entitled to store the Goods or any part thereof at the sole risk of the Customer, whereupon the liability of Bolloré Logistics in respect of such Goods shall wholly cease and the cost of such storage and all other expenses and liability whatsoever paid or payable or incurred or which may be incurred by Bolloré Logistics shall be paid by the Customer on demand.

## 6. Rates

6.1. Unless otherwise stated, rates are expressed in Philippine Peso (PHP).

6.2. The rates initially agreed upon shall be renegotiated at least once a year.

6.3. Bolloré Logistics shall be entitled to revise the rates in the event of changes outside its control, such as but not limited to changes in currency, exchange rates, insurance premiums, freight or fuel rates, Terminal Handling Charges (THC), Bunker Adjustment Factor (BAF), Currency Adjustment Factor (CAF), port or any charges applied to the Goods or the Services.

6.4. Notwithstanding what has been agreed between the Parties in these Conditions, where Bolloré Logistics proves that (i) the continued performance of its contractual duties has become excessively onerous due to an event beyond its reasonable control which it could

not reasonably have been expected to have taken into account at the time of agreement on the rates and that (ii) it could not reasonably have avoided or overcome such event or its consequences, then the Parties are bound, within a reasonable time from notification thereof by Bolloré Logistics to the Customer, to re-negotiate the rates taking into account the consequences of such event. In the event that the new rates are not agreed within thirty (30) days from such notice, Bolloré Logistics shall be entitled to terminate the Services immediately thereafter.

## 7. Payment Terms

- 7.1. Unless otherwise agreed in writing, all invoices rendered by Bolloré Logistics are payable immediately upon receipt, in Philippine Peso (PHP).
- 7.2. The invoices for disbursements shall be issued by Bolloré Logistics separately at its discretion.
- 7.3. Any dispute as to the amount or accuracy of any invoice issued by Bolloré Logistics shall be raised by the Customer within fifteen (15) days from the date of the invoice, failing which the Customer is deemed to have conclusively accepted that the invoice is complete and accurate.
- 7.4. All amounts payable under these Conditions shall be made free and clear of all deductions, withholdings and set-offs against any amounts that may be or become owing between the Parties.
- 7.5. When Bolloré Logistics is instructed to collect freight, duties, charges or other expenses from any person other than the Customer, the Customer shall remain responsible and shall make immediate payment of the same to Bolloré Logistics upon the default of payment by such other person.
- 7.6. When Bolloré Logistics accepts to bear customs duties on behalf of the Customer, the Customer shall remain responsible to pay the same to Bolloré Logistics within the period of time agreed by the Parties. In addition, the Customer shall pay an administrative fee fixed by agreement of the Parties.
- 7.7. The Customer may request credit terms to Bolloré Logistics, which has sole and absolute discretion to accept or reject the credit terms.
- 7.8. In the event that the Customer fails to pay any sum due to Bolloré Logistics within five (5) working days from the date such sum is due, Bolloré Logistics shall be entitled at any time thereafter by written notice to the Customer to declare, that:
  - 7.8.1. all credit terms, including credit limits, in respect of all or any part of the Services rendered pursuant to these Conditions shall be cancelled, whereupon the same shall be cancelled; and
  - 7.8.2. all sums payable by the Customer to Bolloré Logistics in respect of all or any part of the Services rendered pursuant to these Conditions have become due and payable, whereupon the same shall immediately become due and payable.

The above is without prejudice to any other rights or remedies Bolloré Logistics may be entitled to hereunder or at law.

- 7.9. On all amounts overdue to Bolloré Logistics, the Customer shall pay interest calculated from the date such amounts are overdue until payment thereof, at the rate of ten per cent (10%) per annum or the compulsory legal rate if applicable.

## 8. Taxes

- 8.1. The Customer shall pay and discharge forthwith all government charges, duties, levies, tariffs or taxes which are assessed against any of the Goods and Services due on the Customer. As a consequence, the amount to be paid to Bolloré Logistics shall be equal to what Bolloré Logistics would have received if none of the aforesaid taxes had been deducted, withheld or paid for.
- 8.2. As an exception to Clause 8.1, where withholding taxes are applicable and paid by the Customer on behalf of Bolloré Logistics, the Customer shall furnish Bolloré Logistics with necessary evidence of the payment of the said withholding tax and/or the withholding tax certificate.

## 9. Insurance

- 9.1. Bolloré Logistics shall at all times maintain in full force and effect:
- 9.1.1. comprehensive general and professional liability insurance covering its liability under these Conditions; and
  - 9.1.2. workers' compensation/ employer's liability insurance.
- 9.2. The Customer shall at all times maintain in full force and effect:
- 9.2.1. all risks marine cargo insurance for the Goods during local and international transportation; and
  - 9.2.2. adequate industrial all risks damage insurance for the Goods against fire, explosion, lightning, water damage, burglary, terrorism and any ancillary risks during Warehousing Services. The Customer expressly waives its right of recourse against Bolloré Logistics and its insurers for such risks and shall cause its insurers to grant a same waiver of subrogation.
- 9.3. Bolloré Logistics shall not arrange any insurance on behalf of the Customer except upon express written instructions thereof.
- 9.4. Insofar as Bolloré Logistics agrees to arrange such insurances, Bolloré Logistics acts solely as the Customer's agent and the corresponding insurance premium shall be at the Customer's expense, including administrative costs. Furthermore, the Customer shall be subject to the usual policy exceptions and conditions from the insurance company or underwriters taking the risk.

## 10. Liability

- 10.1. **Bolloré Logistics shall not be liable for any liabilities, obligations, losses, damages, penalties, claims, actions, suits, costs, charges and expenses which may be incurred or suffered by the Customer arising out of or in connection with the performance of the Services, unless it is a direct result of the negligent acts or omissions of Bolloré Logistics or its employees.**
- 10.2. **The Customer shall indemnify Bolloré Logistics from and against all liabilities, obligations, losses, damages, penalties, claims, actions, suits, costs, charges and expenses which may be incurred or suffered by Bolloré Logistics as a result of any wrongful or negligent act or omission of the Customer in its non-performance or non-observance of these Conditions.**
- 10.3. **The Customer shall defend, indemnify and hold harmless Bolloré Logistics against all penalties, claims, liabilities (civil and criminal), damages, costs and expenses whatsoever if the Customer delivers to Bolloré Logistics or causes Bolloré Logistics to deal with or handle Dangerous Goods without its agreement. Bolloré Logistics may without notice destroy or otherwise deal with the Dangerous Goods at its sole discretion without compensation to and at the cost of the Customer.**
- 10.4. **The Customer and Owner shall be solely liable for demurrage or loss, damage, contamination, soiling or detention before, during or after the carriage of property (including but not limited to Containers) of Bolloré Logistics or any person or vessel referred to herein caused directly or indirectly by the Customer or Owner or any person acting as servants, agents or independent contractors for or on behalf of either of them.**
- 10.5. **The Customer undertakes that no claim shall be made against any director, servant or employee of Bolloré Logistics which imposes or seeks to impose upon them any liability in connection with any Services undertaken by Bolloré Logistics and if any such claim is made, to indemnify Bolloré Logistics and the said director, servant or employee against all consequences thereof.**

## 11. Exclusion of Liability

- 11.1. **Bolloré Logistics is not liable for acts of error and omission by any third parties involved with the carriage of the Goods, such as, but not limited to, carriers, warehousemen, stevedores, port authorities and other performing parties, unless Bolloré Logistics failed to exercise due diligence in selecting, instructing or supervising such third parties.**
- 11.2. **Bolloré Logistics shall not be liable for the Customer's failure to give sufficient and/or accurate information, as required under Clauses 4.3, 4.4 and 4.5. The Customer shall indemnify Bolloré Logistics from and against all liabilities, obligations, losses, damages, penalties, claims, actions, suits, costs, charges and expenses which may be incurred or suffered by Bolloré Logistics directly or indirectly as a result of such inaccurate information.**
- 11.3. **If Bolloré Logistics agrees in writing to accept Dangerous Goods and if, subsequently, in the sole opinion of Bolloré Logistics, these Goods (i) are deemed to constitute a risk to other goods, property, life or health or (ii) owing to legal, administrative or other obstacles whether as to their carriage, discharge or otherwise, may be detained or cause any other property or**

person to be detained, they may without notice be destroyed or otherwise dealt with at the expense of the Customer or Owner without compensation or any liability whatsoever attaching to Bolloré Logistics.

- 11.4. Neither Party shall be liable to the other for any punitive, consequential or indirect damages sustained by the other Party in connection with these Conditions, including without limitation for business interruptions, loss of profits, loss of revenues, loss of use of assets and loss of contracts, loss of access to markets, damages asserted by third parties, whether or not such damages were foreseeable and whether or not such damages are founded in breach of contract, tort, strict liability or any other legal theory, irrespective of whether such loss is held to be a direct loss by any competent Authority.

## 12. Limitation of Liability

- 12.1. The liability limits contained in any compulsorily applicable Legislation and/or Convention shall apply to the Services. For the Services which are not subject to any compulsorily applicable Legislation and/or Convention, and unless provided otherwise in these Conditions, Bolloré Logistics' total liability towards the Customer arising out of or in connection with the performance of the Services shall not exceed:

12.1.1. in respect of claims arising out of Transportation Services, the lesser of:

12.1.1.1. the value of the Goods lost or damaged, misdirected, misdelivered or in respect of which a claim arises; or

12.1.1.2. two Special Drawing Rights (SDR 2.00) per gross kilogram of the said Goods.

12.1.2. in respect of claims for loss of and damage to the Goods arising out of Warehousing Services, the value of the Goods lost or damaged.

12.1.3. in respect of any customs duties and indirect taxes, whether undertaken by Bolloré Logistics or its subcontractors, a maximum of two hundred eighty thousand Philippine Peso (PHP 280,000.00) per customs declaration.

12.1.4. in respect of all other claims, including for Delay where not excluded herewith, the amount of charges owed to Bolloré Logistics for the Services in respect of which a claim arises.

12.1.5. in any event and notwithstanding the foregoing, for any matter relating to or in connection with these Conditions, whether arising under contract (including under any indemnity set out in these Conditions), negligence, or any other tort, under statute or otherwise, but other than in respect of personal injury or death, a maximum of three million Philippine Peso (PHP 3,000,000.00) per occurrence.

- 12.2. For the purpose of Clause 12.1, the definition of Goods shall exclude any accompanying Container, packaging, tin, box, crate, pallet or equivalent. The value of the Goods shall be the landed cost of the Goods when Bolloré Logistics takes over the Goods, which corresponds to the value of the Goods stated on the purchase invoice (exclusive of any mark-up) plus freight, insurance, taxes and customs duties if paid.
- 12.3. Subject to the conditions and liability limits set forth in these Conditions, Bolloré Logistics shall be liable for any stock shortage value above zero point five per cent (0.5%), where:
- $$\% \text{ of Stock Shortage} = \frac{(\text{Value of Missing Items} - \text{Value of Excess Items Found})}{\text{Total Inventory Value}} \times 100$$
- 12.4. For the sake of valuation of stock discrepancies, the Parties shall jointly conduct IT reconciliation or physical stock-takes at least once a year.
- 12.5. If any Legislation or Convention is compulsorily applicable to the Services hereunder, these Conditions are to be read and construed as if they were subject to such Legislation or Convention.

### 13. Claim Procedure and Time Bar

- 13.1. Unless compulsorily provided otherwise by any applicable Legislation or Convention, the Customer shall send to Bolloré Logistics a written notice of intent to claim, such notice being a condition precedent to any liability on the part of Bolloré Logistics, within three (3) days from:
- 13.1.1. in the case of damage to the Goods, the date of delivery of the Goods;
- 13.1.2. in the case of Delay, non-delivery or loss of the Goods, the date that the Goods should have been delivered; and
- 13.1.3. in any other case, the date of the event giving rise to the claim.
- 13.2. Any claim not made and notified as aforesaid shall be deemed to be waived and absolutely barred except where the Customer can show that it was impossible for it to comply with this time limit and that it has made the claim as soon as it was reasonably possible for it to do so.
- 13.3. Bolloré Logistics shall be discharged from any liability whatsoever in connection with the provision of the Services unless suit is brought within nine (9) months from:
- 13.3.1. in the case of damage to the Goods, the date of delivery of the Goods;
- 13.3.2. in the case of Delay, non-delivery or loss of the Goods, the date that the Goods should have been delivered; and
- 13.3.3. in any other case, the date of the event giving rise to the claim.

## 14. Right of Detention and Lien

- 14.1. **All Goods and documents in the possession, custody and control of Bolloré Logistics, its agents or its subcontractors shall be subject to general lien and right of detention for all sums due to Bolloré Logistics at any time and from time to time whether in respect of the Services provided or in respect of such Goods or otherwise.**
- 14.2. **If the sums due as aforesaid are not satisfied within fourteen (14) days of a notice in writing given by Bolloré Logistics to the Customer, Bolloré Logistics shall be entitled to sell or dispose of the Goods or documents whether by public auction, private treaty or otherwise, and the proceeds of sale shall be applied in satisfaction of firstly, the costs and expenses or the sale or disposal and secondly, the sums due to Bolloré Logistics, without any liability whatsoever on the part of Bolloré Logistics to the Customer.**
- 14.3. **In the event that the proceeds of sale are insufficient to satisfy all sums due to Bolloré Logistics, it shall be entitled to recover from the Customer all sums which remain outstanding.**
- 14.4. **Notwithstanding Clause 14.2, when the Goods are liable to perish or deteriorate, Bolloré Logistics' right to sell or dispose of the Goods shall arise immediately upon any sum becoming due to Bolloré Logistics subject only to Bolloré Logistics taking reasonable steps to bring to the Customer's attention its intention of selling or disposing of the Goods before doing so.**

## 15. Intellectual Property Rights

- 15.1. For the purpose of providing the Services, Bolloré Logistics shall, as the case may be, grant the Customer an access or an interface to Bolloré Logistics' operation software ("**Software**") and/or use the same to perform the Services.
- 15.2. It is hereby agreed that:
  - 15.2.1. the right to use the interface shall be free of charge;
  - 15.2.2. nothing in this Clause shall give rise to a transfer of either the source codes or object codes of the Software; and
  - 15.2.3. whenever an access or an interface is granted to the Customer, such an access or interface shall be allowed strictly during the validity period of these Conditions, and shall therefore immediately cease upon termination or expiration of these Conditions for whatever reason.
- 15.3. Bolloré Logistics shall retain all its rights, titles and interests in any and all inventions (including, but not limited to, software, discoveries, ideas, or improvements, whether patentable or not) owned by it prior to these Conditions. Further, except as expressly provided herein, no license or right is granted hereby to the Customer, by implication or otherwise, with respect to or under any patent application, patent, claims of patent or proprietary rights of the Customer.



## 16. Confidentiality

- 16.1. Save as otherwise provided for in these Conditions, both Parties and their employees shall keep confidential, not reveal or publish or otherwise disclose to any third party, and shall use solely for the purpose of these Conditions, all Confidential Information regarding the other Party which is made available, disclosed, or otherwise made known to the receiving Party in connection with these Conditions.
- 16.2. The obligations of confidentiality and restricted use referred to in this Clause shall be in force for the duration of these Conditions and for three (3) years following their expiration or early termination.
- 16.3. Each Party may disclose the other Party's Confidential Information only to its employees, the employees of its respective Affiliates and its contractors engaged in the performance of the Services on a need- to- know basis, and shall bind such employees and contractors to the same confidentiality and restricted use obligations set forth herein. Each Party shall be responsible for the breach by such employees and contractors of any such obligations.

## 17. Personal Data Protection

- 17.1. Bolloré Logistics may, if necessary for the performance of and in connection with these Conditions, collect information relating to the Customer's individual clients, process that information, share it within Bolloré Logistics' group and transfer it to Bolloré Logistics' subcontractors, agents, insurance brokers and other third parties.
- 17.2. The Customer acknowledges that by agreeing to these Conditions:
  - 17.2.1. it has given Bolloré Logistics its consent to collect, record, hold, store, use and disclose the personal information of its individual clients for the performance of or in connection with these Conditions;
  - 17.2.2. it has obtained the legally valid consent from its individual clients before providing such clients' information to Bolloré Logistics; and
  - 17.2.3. it ensures that the personal information of its individual clients provided to Bolloré Logistics is accurate and most updated.
- 17.3. The Customer shall fully indemnify and hold Bolloré Logistics and its subcontractors, agents, insurance brokers and other third parties harmless against all losses, claims, damages, fees and expenses incurred by Bolloré Logistics as a result of a breach of Clause 17.2.



## 18. Force Majeure

- 18.1. In the event that either Party is prevented from and/or delayed in the performance of its obligations under these Conditions (excluding payment obligations) by an event of Force Majeure, such Party shall communicate as soon as practicable to the other Party the existence and circumstance(s) of the event of Force Majeure.
- 18.2. The Party making in good faith such communication shall thereupon be excused from performance or punctual performance of its obligations during the continuance of the circumstance(s) causing such prevention or delay, except for payment obligations.
- 18.3. If an event of Force Majeure lasts more than sixty (60) days, either Party may terminate these Conditions. Upon termination, each Party shall immediately pay any and all amounts due to the other Party at the date of the termination, notwithstanding the occurrence of the said Force Majeure event.

## 19. Termination

- 19.1. These Conditions may be terminated by either Party:
  - 19.1.1. with immediate effect, upon written notice given to the other Party if that other Party becomes subject to an Insolvency Event; or
  - 19.1.2. in case of material breach by the other Party of any terms of these Conditions, by giving a written notice of the material breach to the breaching Party. If, within thirty (30) days of the notice, the breaching Party does not remedy the material breach or, if remedying is not possible, does not compensate the other Party for any loss or damage caused by the material breach, these Conditions shall be deemed terminated immediately upon expiration of the thirty (30) day period.
- 19.2. Upon termination of these Conditions and provided that such termination is not attributable to Bolloré Logistics, the Customer shall pay the net book value of all the investments made by Bolloré Logistics for the provision of Warehousing Services and a sum corresponding to six (6) times the monthly space rental or to the space rental for the remaining months until the expiration date of these Conditions, whichever is lower.
- 19.3. Upon termination or expiration of these Conditions, the Customer shall pay any and all amounts due to Bolloré Logistics for the provision of the Services, including without limitation implementation costs, within thirty (30) days from the date of termination or expiration of these Conditions.
- 19.4. Upon termination or expiration of these Conditions for any reason, Bolloré Logistics shall release any and all Goods in its possession in accordance with the Customer's instructions provided that all invoiced amounts payable to Bolloré Logistics are settled in full by the Customer. The rates in any applicable Quotation or, where there is no Quotation, the rates applicable immediately prior to the termination or expiration, shall apply to the Services rendered by Bolloré Logistics to implement the Customer's release instructions.

## 20. Law and Jurisdiction

- 20.1. These Conditions shall be governed by and construed in accordance with the laws of Philippines.
- 20.2. If a dispute arises out of or in connection with these Conditions, including any question regarding their existence, validity or termination (the “**Dispute**”), the Parties shall use their best efforts in good faith to resolve the Dispute amicably.
- 20.3. If no amicable settlement is reached within thirty (30) days of a written notice given by either Party to the other Party that a dispute has arisen, the Dispute shall be referred to and finally resolved by the courts of the Philippines, which shall have exclusive jurisdiction.

## 21. Miscellaneous

- 21.1. **Order of Precedence.** Any inconsistency in any documents relating to the Services shall be resolved by giving precedence in the following order: (i) the Quotation insofar as it refers to these Conditions; (ii) these Conditions; and (iii) any other transport document issued by Bolloré Logistics such as a seaway bill or an airway bill.
- 21.2. **Non waiver.** Bolloré Logistics shall not be bound by any agreement purporting to waive or vary these Conditions unless such agreement to waive or vary is in writing and signed by Bolloré Logistics. No omission or delay on the part of Bolloré Logistics in exercising its rights shall operate as a waiver thereof, nor shall any single or partial exercise by Bolloré Logistics of any such right preclude the further or other exercises thereof or the exercise of any other right which it has. The rights and remedies of Bolloré Logistics provided in these Conditions shall be cumulative and not exclusive of any rights or remedies otherwise provided by law.
- 21.3. **Assignment.** These Conditions may not be transferred and/or assigned by the Customer in whole or in part without the prior written consent of Bolloré Logistics. Bolloré Logistics shall be entitled to transfer, subcontract and/or assign its rights and/or obligations hereunder, in whole or in part, to any third party or any of its Affiliate in its sole discretion and the Customer hereby irrevocably consents to such transfer, subcontracting and/or assignment.
- 21.4. **Rights of Third Parties.** Nothing contained in these Conditions is intended to confer upon any person other than the Parties hereto any rights, benefits or remedies of any kind or character whatsoever or any right to enforce these Conditions and no person shall be deemed to be a third party beneficiary under or by reason of these Conditions.
- 21.5. **Notices.** Any notice under these Conditions shall be in writing and served by leaving it at or sending it by prepaid or registered post to the Parties’ registered office. Each Party shall notify the other Party in case of changes of address.
- 21.6. **Severability.** Each provision of these Conditions is distinct and severable and a declaration of invalidity or unenforceability of any provision by a court of competent jurisdiction shall not affect the validity or enforceability of any other provision.

- 21.7. **Survival Clauses.** The provisions of these Conditions which by their nature are intended to survive the termination, cancellation, completion or expiration of these Conditions shall continue as valid and enforceable obligations of the Parties notwithstanding any such termination, cancellation, completion or expiration, including but not limited to the provisions in respect of confidentiality, intellectual property, dispute resolution, applicable law, liability, taxes, personal data protection. Termination of these Conditions shall be without prejudice to any rights or remedies that the Parties may have arising prior to or in connection with such termination.

## Rules governing Electronic Data Interchange

### 1. Objective and Definitions

- 1.1. These Rules are intended to facilitate the provision of Services by Bolloré Logistics to its Customers through the use of Electronic Data Interchange by electronically sending and receiving data in agreed formats in substitution for conventional paper-based documents. These Rules seek to ensure that such transactions are not legally invalid or unenforceable by reason only of their being effected by means of available electronic technologies for the benefit of the Parties.
- 1.2. Terms defined in the Conditions to which these Rules form an Annex but not specifically defined herein shall, unless the context otherwise requires, have the same meanings when used in these Rules.
- 1.3. In these Rules, the following terms, except where the context otherwise requires or where it is otherwise stated, shall have the following meanings:

<b>“Adopted Protocol”</b>	means the method for the interchange of Messages based on the [EDIFACT] standard for the presentation and structuring or the communication of Messages, or such other standard as may be specifically agreed upon in writing by the Parties, and more particularly defined in the User Manual;
<b>“Data Log”</b>	means a complete and chronologically sequential record, automatically generated, of all the Messages sent and received by a Party and maintained in accordance with the rules stipulated in the User Manual;
<b>“Message”</b>	means a communication relating to the provisions of the Services which is structured in accordance with the Adopted Protocol and includes, where the context permits, any part of such communication;
<b>“Rules”</b>	mean the present Rules governing Electronic Data Interchange;
<b>“User Manual”</b>	means the edition currently in force of the manual on, inter alia, the operational, security and technical procedures and rules applicable to the transmission of Messages using the Adopted Protocol; and
<b>“Writing”</b>	includes a duly authenticated Message.

- 1.4. In these Rules, references to "electronic" include a reference to mechanical, electromechanical, optical, electro-chemical or other medium for the storage or conveyance of transmitted Messages.
- 1.5. These Rules shall apply to all Messages between Bolloré Logistics and its Customers using the Adopted Protocol in relation to the provision by Bolloré Logistics of any Services to which these Conditions apply.

## 2. Systems Operations and Confidentiality

- 2.1. The Parties agree that each of them shall:
  - 2.1.1. at its own expense, test and maintain its equipment, software and services necessary to effectively and reliably transmit and receive Messages;
  - 2.1.2. ensure that no changes are made to the systems operations which impair the mutual capabilities of the Parties to communicate as contemplated by these Rules without providing reasonable prior notice of the intended change;
  - 2.1.3. implement and maintain security procedures, including any specification in the User Manual, to protect Messages and their records against misuse, improper or unauthorized access, alteration or loss;
  - 2.1.4. that its Messages are correct and complete in form and secured in accordance with the provisions of the User Manual; and
  - 2.1.5. ensure that intermediaries employed to retransmit Messages are instructed not to make unauthorized change in the data content and that the data content of such Messages is not disclosed to any unauthorized person.
- 2.2. No information contained in any Message communicated under these Rules shall be considered confidential unless by operation of law or by designation in the User Manual or in the Message.
- 2.3. In the circumstances stipulated in the User Manual or if so agreed between the Parties, the Parties shall apply special protection (such as encryption or other means listed in the User Manual or agreed between the Parties) to the Messages transmitted. Unless the Parties otherwise agree, the recipient of Messages so protected shall ensure that at least the same level of protection used by the sender is applied for any further transmission.

## 3. Verification of Messages

All Messages must identify the sender and recipient in accordance with the User Manual and must include a means of verifying the formal completeness and authenticity of the Message by some means agreed upon in writing by the Parties or by the means provided for in the Adopted Protocol.

#### 4. Integrity of Messages

- 4.1. Any Message transmitted in compliance with these Rules shall be deemed to have been received when accessible to the intended recipient in the manner designated in the User Manual. Subject to Rule 4.2, each Party accepts the integrity of all Messages and agrees to grant these the same status as would be applicable to information sent via paper documents.
- 4.2. Where there is evidence that a Message has been or is likely to have been corrupted, garbled, incomplete, and incorrect or not in good order, it shall not be acted upon by the recipient.
- 4.3. If the sender has been able to identify the circumstances mentioned in Rule 4.2, the sender shall re-transmit the Message as soon as practicable with a clear indication that it is a corrected Message. In the absence of such re-transmission, the recipient's version of the Message shall prevail.
- 4.4. If the recipient has been able to identify the circumstances mentioned in Rule 4.2, the recipient shall inform the sender (if identifiable from the received Message) as soon as practicable and shall not act on the Message until it has received the correct Message or confirmation that the received Message is correct. In the absence of such notice to the sender by the recipient, the sender's version of the Message shall prevail.
- 4.5. Notwithstanding that the sender is responsible and liable for the completeness and accuracy of a Message, the sender will not be liable for the consequences of an incomplete or incorrect Message if the error is or should be reasonably obvious to the recipient.
- 4.6. If the recipient has reason to believe that the message is not intended for it, the recipient should take reasonable action to inform the sender immediately and should delete the information contained in the Message from its system but not the Data Log.

#### 5. Acknowledgement of Receipt of Messages

- 5.1. Unless otherwise designated in the User Manual or unless the sender of a Message has expressly requested the recipient to acknowledge receipt of the Message, the receipt of the Message need not be acknowledged by the recipient.
- 5.2. Where an acknowledgement of receipt of a Message is designated in the User Manual or the sender of a Message has expressly requested the recipient to acknowledge receipt of a Message, the following provisions shall apply:
  - 5.2.1. any acknowledgement of receipt of such a Message shall be given in such form, by such method and within such time limit as may be specified in the User Manual or as may be expressly agreed between the Parties;
  - 5.2.2. where the User Manual does not specify the form, method and/or time limit for the acknowledgement of receipt of a Message, or the sender has not agreed with the recipient that the acknowledgement is to be given in a particular form, by a particular method and/or by a certain time limit, the acknowledgement may be given as soon as practicable after receipt of the Message by the recipient by:
    - 5.2.2.1. any communication by the recipient, automated or otherwise; or

5.2.2.2. any conduct of the recipient,

sufficient in the circumstances then existing to indicate to the sender that the Message has been received;

5.2.3. if the sender has not received an acknowledgement within the time limit mentioned in Rule 5.2, the sender should take immediate action to obtain it. If, despite such action, an acknowledgement is not received within a further time stipulated by the sender, the sender should advise the recipient of the non-receipt in accordance with the procedures laid down in the User Manual. If the sender does so, it is entitled to regard the Message as null and void upon giving notice to that effect to the recipient without undue delay;

5.2.4. the recipient shall not act on such Message until the acknowledgement is sent in accordance with the foregoing provisions; and

5.2.5. the costs incurred by the recipient in sending such an acknowledgement shall be borne by the sender.

## 6. Confirmation of Content

6.1. The sender of a Message may, in addition to the acknowledgement, request the recipient to advise it whether the content of the Message has been received and the form it has been received in, without prejudice to any subsequent consideration or action that the contents may warrant. A recipient is not authorized to act on such a Message until it has complied with the request of the sender. The sender shall bear the cost incurred by the recipient in sending the confirmation of content/form.

6.2. The confirmation referred to in Rule 6.1 shall be given in such manner and within such time limit as the Parties may expressly agree. Where the sender has not agreed with the recipient that the confirmation is to be given in particular form or by a particular method or by a particular time limit, confirmation may be given as soon as practicable after receipt of the Message by the Recipient by:

6.2.1. any communication by the recipient, automated or otherwise; or

6.2.2. any conduct of the recipient,

sufficient to indicate to the sender that the contents/form of the Message has been received.

6.3. If the sender has not received the requested confirmation advice within the time limit mentioned in Rule 6.2, the sender should take action either to obtain the confirmation or to re-transmit the Message. If, despite such action, the recipient fails to confirm the contents/form of the Message as required, the sender shall treat the Message as null and void and give notice to that effect to the recipient.

## 7. Validity and Enforceability

- 7.1. The Parties agree that valid and enforceable obligations may be created by the communication of Messages in compliance with these Rules. The Parties expressly waive all rights to object to the validity of a transaction solely on the ground that the communication between the Parties occurred through the use of Electronic Data Interchange.
- 7.2. Without regard to the absence of any writings and written signatures, to the extent permitted by law, the records of Messages maintained by the Parties (including the Data Log) shall be admissible and may be used as evidence of the information contained therein. The Parties agree not to contest the admissibility of the Data Log as evidence in any legal, administrative, judicial or other proceedings insofar as it has been maintained in accordance with the provisions of the User Manual.
- 7.3. Unless otherwise agreed between the Parties or required by law, a contract concluded through the use of Electronic Data Interchange under these Rules shall be deemed to be formed when the Message sent as acceptance of an offer has been received in accordance with Rule 4.1.

## 8. Storage of Data

- 8.1. Each Party shall ensure that a Data Log is maintained without any modification in accordance with the provisions of the User Manual.
- 8.2. The Parties shall maintain the Data Log unchanged and protected from corruption for a period of seven (7) years or for such other period as agreed upon by the Parties or mandated by the law in the country where the Data Log is maintained.
- 8.3. The Data Log may be maintained on computer media or other suitable means provided that the data can be easily retrieved and presented in readable form, whether as a print-out or in any other visible format.
- 8.4. Each Party shall ensure that the person responsible for the data processing system it relied on is available to certify that the Data Log and any reproduction made from it is correct.

## 9. Third Party Service Providers

- 9.1. Messages may be transmitted to either Party directly or through any third party service provider ("**Intermediary**") and processed, stored or logged by such Intermediary. Each Party shall pay the costs of each service it requires from its own Intermediary and may change this Intermediary by giving the other Party a two (2) month prior written notice, provided that the other Party accepts the change in writing.
- 9.2. A Party using the services of an Intermediary in the communication or processing of Messages shall be responsible for any acts, failures or omissions of that Intermediary in the provisions of the said services.