

**STANDARD TERMS AND CONDITIONS  
TRANSPORT, WAREHOUSE AND VALUE ADDED SERVICES**

**1. DEFINITIONS & INTERPRETATION**

1.1 In these terms and conditions, the following words shall have the following meanings:

**Agreement** means the contract constituted by the following documents: (i) Confirmation; (ii) these Standard Terms and Conditions; (iii) the Specification and (iii) any rules, requirements, and/or schedules annexed or attached to the Confirmation;

**Charges** means the charges specified in the Confirmation;

**Commencement Date** means the date for the commencement of the Services specified in the Confirmation, or if no date is specified in the Confirmation or if earlier, the date on which Spectra commences the provision of the Services;

**Contract Year** means a period starting on the Commencement Date or an anniversary thereof and, subject to earlier termination in accordance with Clause 2.4, 2.5, 6.4.3 or 16.5, ending twelve (12) months after;

**Control** means, in relation to any entity:

- (a) the right to exercise, directly or indirectly, more than 50 per cent. of the voting rights attributable to the management of that entity; and/or
- (b) the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of that entity;

and "**Controlled**" and "**Controlling**" shall be construed accordingly

**Confirmation** means the email or other document containing the confirmation of the appointment of Spectra by the Customer to provide the Services;

**Customer** means the person/company/entity at whose request Spectra provides the Services as specified in the Confirmation;

**Cyber Event** means any actual or suspected action by a third party which affects the computers, computer system, computer software and/or information and communication technology system of one or more person(s) through or by the use of code, computer virus, process or any other means whatsoever, without the consent of the affected person(s);

**Dangerous Goods** means goods which are or may become dangerous, hazardous, noxious (including radioactive materials), inflammable, explosive or which are or may become liable to damage any property or person whatsoever;

**Force Majeure** includes official or unofficial industrial action, industrial sabotage, industrial dispute (in each case, whether or not relating to that Party's workforce), fire, shortage of, inability or delay in obtaining fuel, supplies, labour, materials or services, act of Government or statutory authority, acts of God, acts of war, terrorism, Cyber Events, shortage of fuel, software defects or failures, epidemics, abnormal weather conditions and other events which are beyond a Party's reasonable control;

**Goods** means the goods as further described in the Confirmation that are the subject of the Services together with any pallets, cages and packaging materials;

**Group Company** means any entity Controlled by, Controlling or under common Control with either Party to this Agreement;

**Intellectual Property** means any patent, copyright, registered design, unregistered design right, trade mark, business method or other industrial or intellectual property owned or used by a Party together with any current applications for any registrable items of the foregoing;

**USD** means the lawful currency of the United States of America;

**Parties** means Spectra and the Customer (and each individually a Party);

**Services** means:

- (a) the warehouse services in respect of the Goods, which may comprise of: (i) receipt, (ii) handling, (iii) storage, (iv) dispatch and (v) related warehouse services; and/or
- (b) the Transport Services, and/or
- (c) Value Added Services, and/or
- (d) any other services,

in each case as detailed in the Confirmation;

**Shipment** means a consignment of Goods sent at one time by or for the Customer from one address to another address;

**Specification** means the Value Added Services requested by the Customer;

**Spectra** means either SPECTRA LOGISTICS (PRIVATE) LIMITED or SPECTRA INTEGRATED LOGISTICS (PRIVATE as referred to in the Confirmation.;

**Spectra Personnel** means all personnel of Spectra involved in the performance of Spectra's obligations under this Agreement;

**Territory** means the Democratic Socialist Republic of Sri Lanka;

**Third Parties** shall have the meaning assigned in Clause 0;

**Transport Services** means the carriage of Goods by road to be provided by Spectra pursuant to the Agreement as further detailed in the Confirmation;

**Value Added Services** means modifying the form, content, status, or nature of the Goods, thereby adding value to the same according to the Specifications of the Customer;

**Warehouse** means Spectra's storage and handling facilities as detailed in the Confirmation and any other facility from which Spectra provides the Services; and

**Working Day** means the working days specified in the Confirmation.

1.2 References to an enactment, order, regulation or other similar instrument shall be deemed to include reference to any amendment by any subsequent enactment, order, regulation or similar instrument.

1.3 Clause, schedule, annex and appendix headings are for convenience of reference only and are not to be taken into account in construction.

1.4 In this Agreement, unless the context requires otherwise:

1.4.1 words in the singular shall be deemed to include the plural and vice versa;

1.4.2 words importing any particular gender shall include all other genders;

1.4.3 references to persons shall include bodies of persons whether corporate or incorporate;

1.4.4 words importing the whole shall be treated as including a reference to any part of the whole; and

1.4.5 the words **include(s)** or **including** shall be deemed to have the words "without limitation" following them.

1.5 If there is any ambiguity, inconsistency, or conflict between the provisions of any of the documents comprising the Agreement, then unless otherwise stated, the documents take precedence in the order set out above in Clause 1.1 (definition of **Agreement**).

## **2. APPOINTMENT AND TERMINATION**

2.1 This Agreement shall take effect from the Commencement Date and shall continue in effect thereafter unless and until terminated in accordance with Clause 2.4, 2.5, 6.4.3 or 16.5.

2.2 Subject to payment of the Charges in accordance with Clause 6, Spectra will provide the Services in accordance with the terms of this Agreement.

2.3 The Services will be provided on each Working Day. Any Services required outside the Working Day will incur additional charges to be agreed between the Parties.

2.4 Either Party may terminate the Agreement on thirty (30) days' written notice.

2.5 Without prejudice to any accrued rights and remedies under the Agreement, the Agreement may be terminated immediately by written notice on the occurrence of any of the following events (provided such notice to terminate is given within three (3) months of the occurrence of the event):

2.5.1 by either Party if the other Party commits any material breach of any of its obligations under the Agreement, which it fails to remedy within twenty-one (21) days of the date of service of a written notice specifying the breach (or such longer period as the notice may specify);

2.5.2 by either Party where there is a change in Control of the other Party or of its ultimate holding company, which in the reasonable opinion of the Party giving notice, detrimentally affects its business interests; or

2.5.3 by either Party if the other Party enters into liquidation or administration whether compulsory or voluntary otherwise than for the purpose of amalgamation or reconstruction or compound with its creditors or has a receiver (including an administrative administrator, trustee or similar officer) appointed over all or part of its assets or its undertaking or part thereof or if it shall make any composition or arrangement with its creditors or if any action, application, petition or proceeding shall be initiated relating to any of the above matters or to any inability to pay debts or to credit worthiness or if it is unable to pay its debts.

## **3. CO-OPERATION**

3.1 The Parties shall cooperate in good faith to ensure the smooth and efficient performance of the Services.

3.2 Spectra shall provide the Customer with such information concerning the performance of the Services as the Customer reasonably requires from time to time.

3.3 The Customer will notify Spectra in writing of all changes in its business which could have an impact on the Services.

## **4. OBLIGATIONS OF SPECTRA**

4.1 During the Term, Spectra shall:

- 4.1.1 provide the Services with reasonable care, diligence, skill and judgment and shall have due regard to the interests of the Customer in exercising any discretion permitted under this Agreement;
  - 4.1.2 provide suitably qualified, trained and equipped Spectra Personnel to perform the Services;
  - 4.1.3 comply with all statutory requirements applicable to the employment of all Spectra Personnel;
  - 4.1.4 maintain such operating licences as are required by law; and
  - 4.1.5 comply with all relevant legislation, statutes, regulations and other enactments including the relevant regulations having the force of law in the Territory from time to time in relation to the provision of the Services.
- 4.2 Value Added Services
- 4.2.1 The Customer may reject any Goods delivered to it that do not comply with the Specification in any material respect (**Defective Goods**), provided that:
    - (i) written notice of rejection is given to Spectra within two (2) days of delivery of the Defective Goods by Spectra or collection of the Defective Goods by or on behalf of the Customer; and
    - (ii) none of the events listed in Clause 4.2.3 apply.
  - 4.2.2 If the Customer fails to give notice of rejection in accordance with Clause 0, it shall be deemed to have accepted the Goods.
  - 4.2.3 Spectra shall not be liable for any Defective Goods in any of the following events:
    - (i) the Customer makes any further use of the Defective Goods after giving notice in accordance with Clause 4.2.1;
    - (ii) the non-compliance with the Specification arises because the Customer failed to follow the instructions for the storage and handling of the Goods;
    - (iii) the non-compliance with the Specification arises as a result of Spectra following instructions given by or on behalf of the Customer;
    - (iv) the Customer alters or repairs the Defective Goods in any way;
    - (v) the non-compliance arises as a result of wilful damage, negligence, or abnormal storage or working conditions which occurs after they leave the Warehouse; or
    - (vi) the Defective Goods differ from the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.
  - 4.2.4 If the Customer rejects Defective Goods under Clause 4.2.1, Spectra shall in its sole discretion:
    - (i) take corrective action to rectify such non-compliance; or
    - (ii) pay to the Customer an amount equal to the Charges paid for the Services provided in respect of the Defective Goods,
  - 4.2.5 Once Spectra has complied with the provisions of Clause 4.2.4, it shall have no further liability to the Customer for the rejected Goods' failure to comply in all material respects with the Specification. Save as set out in Clauses 4.2.1 and 4.2.4 Spectra shall not be

liable for any failure of the Goods to comply with the Specification howsoever arising (whether caused by negligence or otherwise).

- 4.3 Spectra shall keep stock records showing all transactions and proceedings relating to the Goods and the Services to be provided pursuant to the Agreement. Such records shall be kept for a period of eighteen (18) months from the date of creation of such record.
- 4.4 Spectra shall upon the Customer's request on reasonable prior written notice from the Customer allow the Customer and its duly authorised representatives to have access during Working Days to the Warehouse and the stock records for the sole purpose of inspecting the Warehouse, the Goods and such records and the Customer shall be entitled to take copies thereof or extracts therefrom.
- 4.5 Spectra shall carry out one (1) detailed stock audit of the Goods in the Warehouse per twelve (12) month period at a date to be agreed by the Parties. Any additional stock audit which the Customer may require Spectra to carry out will incur additional charges to be agreed between the Parties.

## **5. THE GOODS**

5.1 The Customer represents and warrants that:

- 5.1.1 all Goods will be safe for storage and handling provided the same are dealt with by Spectra in accordance with all reasonable instructions in that regard given by the Customer and that, save where Spectra has expressly accepted in writing to deal with Dangerous Goods under Clause 5.3, no Goods comprise, contain or are packaged in any dangerous, noxious or illegal substance;
- 5.1.2 all Goods to be stored, handled and/or delivered by Spectra will be appropriately packed, labelled and marked and otherwise as may be agreed between the Customer and Spectra (such agreement not to be unreasonably withheld or delayed); and
- 5.1.3 the Goods are suitable for carriage by road; and
- 5.1.4 it is either the Customer or the agent of such Customer who is authorised to contract with Spectra on the terms of the Agreement in respect of the Goods.

5.2 The Customer shall promptly provide Spectra with such information, including information concerning the nature of the Goods (including amongst other things whether the Goods are dangerous or require temperature control), the appropriate manner and method of storage, handling and transportation of the Goods and relevant health and safety information relating to the same, execute all documents and do all acts and things reasonably required in order to enable Spectra to:

- 5.2.1 arrange and safely perform the Services; and
- 5.2.2 comply with all laws, regulations and conditions applicable to the Goods within the Territory, receipt and transit.

### **5.3 Dangerous Goods**

- 5.3.1 The Customer shall not deliver to Spectra or cause Spectra to deal or handle Dangerous Goods unless Spectra expressly accepts in writing to deal with the Dangerous Goods. Additional charges may apply to the handling of Dangerous Goods.
- 5.3.2 If Spectra agrees to accept Dangerous Goods, the Customer or someone acting on its behalf, shall give Spectra written notice of the nature of the Dangerous Goods prior to Spectra 's receipt of the Dangerous Goods. The written notice shall include all information necessary for Spectra to perform its obligations in connection with the Dangerous Goods in accordance with, all applicable laws, regulations or requirements (or any combination of the foregoing), including obtaining all necessary approvals,

consents and/or licences from the relevant regulatory authorities in order for Spectra to be able to store, handle and/or transport the Dangerous Goods. Such information must include the characteristics of the Dangerous Goods, the appropriate manner and method of storage, handling and transportation of the Dangerous Goods.

- 5.3.3 The Dangerous Goods must be distinctly marked on the outside so as to indicate the nature and characteristics of the Dangerous Goods and so as to comply with all applicable laws, regulations and requirements.
- 5.3.4 Dangerous Goods which have been tendered to Spectra in breach of Clause 5.3.1 or which, in the opinion of Spectra, constitute a risk to other goods, property, life or health may, at the sole discretion of Spectra or any other person in whose custody they may be at the relevant time and without notice to the Customer, be destroyed or otherwise dealt with at the expense and risk of the Customer and without liability to Spectra.
- 5.3.5 If any of the Goods are likely to taint or affect other goods, or are liable to cause contamination, soiling and/or remedial cleaning expenses to be incurred, or likely to harbour or encourage vermin or other pests, they may, without notice to the Customer, be destroyed or otherwise dealt with at the expense and risk of the Customer and without liability to Spectra.

#### 5.4 **Goods requiring temperature/environmental control**

- 5.4.1 The Customer shall not deliver to Spectra or cause Spectra to deal or handle Goods which require temperature, ventilation or any other kind of environmental control (**Controlled Goods**) unless Spectra expressly accepts in writing to deal with such Goods. Additional charges may apply to the handling of Controlled Goods.
  - 5.4.2 If Spectra agrees to accept Controlled Goods, the Customer or someone acting on its behalf, shall give Spectra written notice of the nature of the Goods, the particular temperature range, ventilation or other special controls to be maintained prior to Spectra 's receipt of the Controlled Goods.
  - 5.4.3 The Customer undertakes that any Controlled Goods delivered by or on behalf of the Customer has, where appropriate, been properly pre-cooled or ventilated. If the above requirements are not complied with, Spectra shall not be liable for any loss or deterioration of or damage to the Controlled Goods caused by the Controlled Goods not being at the required temperature or properly ventilated or in the required environment.
- 5.5 Spectra shall have a general lien on the Goods and documents relating to the Goods, funds held and any other goods in respect of which Spectra is providing Services to the Customer (**Other Goods**) and any documents relating thereto for payment of all monies due by the Customer to Spectra under the Agreement or if Spectra reasonably forms the view that the Customer is or is likely to become unable to pay its debts. Spectra shall also have a general lien on the Goods and any documents relating to the Goods, funds held and Other Goods and any documents relating thereto for all sums due from the Customer to Spectra and/or any Group Company of Spectra under any other contract.
- 5.6 Spectra shall be entitled to continue to charge the Customer for any Charges accruing during the exercise of its lien. Spectra reserves the right to move any Goods which it holds under lien to alternative storage, provided it shall use reasonable endeavours to keep the Goods safe.
- 5.7 Where Spectra elects to exercise its right of lien in accordance with Clause 5.5, it shall have the right to sell the Goods, Other Goods and documents to satisfy the debt provided that Spectra first gives the Customer seven (7) days' written notice in respect of non-perishable Goods and twenty four (24) hours written notice in the case of perishable Goods. Spectra shall be entitled to use any monies realised to satisfy the debt and to pay any reasonable costs of sale or disposal.

## **6. CHARGES AND PAYMENT TERMS**

- 6.1 All the Charges are exclusive of VAT and all other applicable taxes and duties. Spectra may in its absolute discretion vary the Charges at any time by giving thirty (30) days' written notice to the Customer.
- 6.2 Spectra 's invoices raised pursuant to the Agreement are due for payment within thirty (30) days of the relevant invoice date. All payments due from the Customer under the Agreement (including the Charges) shall be made free and clear from any deduction in respect of bank charges or otherwise and from any set-off, abatement or counterclaim of any kind.
- 6.3 If the Customer, in good faith, disagrees on reasonable grounds with the amount of, or any amounts within, any invoice submitted by Spectra, then the Customer shall pay the amount of the invoice that is payable and not disputed, in accordance with the provisions of Clause 6.2 but shall provide its justification for disputing the amount of, or any amounts within, any invoice in writing within fifteen (15) days of the date of the relevant invoice. The Customer and Spectra shall endeavour to resolve the dispute in accordance with Clause 22. For the avoidance of doubt, the Parties agree that the Customer shall only be entitled to withhold the disputed amount and that the balance of any amounts due under a particular invoice, which are not disputed, shall be paid over by the Customer to Spectra in accordance with the provisions of Clause 6.2.
- 6.4 Without prejudice to any other rights or remedies of Spectra (whether expressly specified in the Agreement or otherwise) in the event that the Customer fails to pay any of the Charges and/or any other sums due under this Agreement on their due dates for payment, Spectra shall be entitled to:
- 6.4.1 on written notice, suspend performance of the Agreement (which may include the suspension of all or any Services already ordered by the Customer under this Agreement) until all sums owing have been paid in full;
- 6.4.2 charge interest on all sums due at two per cent (2%) per annum over the base lending rate from time to time of Sri Lanka Inter Bank Offered Rate from the due date until payment (whether before or after judgement), such interest to accrue on a daily basis; and/or
- 6.4.3 terminate the Agreement immediately by giving written notice to the Customer, provided that Spectra first gives the Customer fourteen (14) days' written notice requiring payment of the sum due and the Customer has failed to make payment during such period,

provided always that the rights set out in this Clause 6.4 will not arise if the Customer has disputed the relevant invoice in accordance with Clause 6.3.

## **7. SPECTRA 'S LIABILITY FOR LOSS OR DAMAGE TO GOODS**

### **7.1 Spectra 's liability for loss or damage to Goods during Transport Services**

- 7.1.1 Subject to the remainder of this Clause 7, Spectra shall be liable for loss, destruction, mis-delivery of or damage to Goods which occurs during the provision of the Transport Services and which results from Spectra 's negligence or wilful default up to a maximum amount of the value of any Goods lost, destroyed, mis-delivered or damaged (as determined in accordance with Clause 7.3 below)

### **7.2 Spectra 's liability for loss or damage to Goods for all Services (other than the Transport Services)**

- 7.2.1 Subject to the remainder of this Clause 7, Spectra shall be liable for loss, destruction of or damage to Goods which occurs during the provision of the Services (other than the Transport Services) where such loss, destruction or damage;

- (i) occurs in the course of the operation and management of the Warehouse but the reason for such loss, destruction or damage is not identifiable (**Shrinkage**); or
- (ii) results from Spectra's negligence or wilful default.

#### 7.2.2 Tolerance

- (i) Spectra's liability under Clause 7.2.1 will be measured in respect of each Contract Year. Within twenty-eight (28) days of the end of each Contract Year, Spectra shall calculate the net stock difference it is liable for under Clause 7.2.1.
- (ii) If in any Contract Year the total of the sums calculated in accordance with Clause 7.2.1 is more than the stock loss tolerance for that Contract Year then Spectra shall pay to the Customer an amount equal to the excess within twenty-eight (28) days of the same being ascertained.
- (iii) For the purposes of this Clause 7.2.2(iii), the stock loss tolerance shall be 0.05% of the aggregate monetary value of all Goods processed as part of the Services and the Goods despatched from the Warehouse during that Contract Year (**Tolerance**).
- (iv) In calculating Spectra's liability under 7.2.1, the Tolerance will be applied to abate Spectra's liability in the following order of priority:
  - (i) first against loss, destruction of or damage to Goods through Shrinkage; and
  - (ii) secondly against loss, destruction of or damage to Goods due to Spectra's negligence or wilful default.
- (v) In each instance, the Tolerance will be absorbed only to the extent that Spectra would have been liable but for the Tolerance and accordingly will not be applied in respect of any loss of or damage to Goods for which Spectra would not be liable in any event.

7.2.3 On receipt of any Goods Spectra will so far as reasonably practicable carry out an external check of the condition of the Goods and issue a receipt with details of any apparent problems.

### 7.3 Value of Goods

- 7.3.1 For the purposes of assessing Spectra's liability under this Clause 7, the value of Goods in the case of Goods that are lost, destroyed, mis-delivered, or damaged,
- (i) in respect of Goods imported into the Territory, the landed cost of the Goods as declared to the Customs of the Territory; or
  - (ii) in respect of Goods manufactured in the Territory, the manufacturing costs incurred by the Customer for the relevant Goods (excluding VAT and any other applicable taxes or duties),

less any salvage value.

### 7.4 Signed Receipts

Spectra shall, if so required, sign a document prepared by the Customer acknowledging the receipt of the Goods but no such document shall be evidence of the condition or of the correctness of the declared nature, quantity, or weight of the Goods at the time it is received by Spectra and the burden of proving the condition of the Goods in receipt by Spectra and that the



Goods were of the nature, quantity or weight declared in the relevant document shall rest with the Customer.

## **7.5 Delivery and Dispatch**

The acceptance of Goods by the Customer shall be the responsibility of the Customer and/or its authorised representative. The Customer represents that such representative is duly authorized to accept the Goods. Customer agrees that handing over of the Goods by Spectra to such representative is deemed to be delivery to the Customer and that it is accepted in good order and condition and will not be called in question.

## **7.6 Exclusions and overall liability for loss of or damage to the Goods**

7.6.1 Without prejudice to Clauses 7.1 and 7.2, Spectra will not be liable for:

- (i) any claims under Clause 7.1 unless they are notified in writing to Spectra at the time of delivery of the Goods by Spectra;
- (ii) loss of or damage to any Goods due to faulty or inadequate packaging, except to the extent that such loss or damage is due to the negligence of Spectra when Clause 7.1.1 or 7.2.1(ii) may apply;
- (iii) Goods retained or confiscated for any reason whatsoever at any customs point, or damaged threat;
- (iv) Goods lost or damaged unless such Goods were in good and sellable condition when delivered to Spectra;
- (v) the contents of any sealed carton or container which bears no evidence of having been opened; or
- (vi) Goods found to be missing on dismantling of any pallet load.

7.6.2 The maximum aggregate liability of Spectra under this Clause 7 howsoever arising (whether caused by negligence, wilful default or otherwise) from the Services provided hereunder during any Contract Year shall not exceed USD 250,000 (or a pro-rata amount for a Contract Year which is less than twelve (12) months).

## **8. SPECTRA 'S LIABILITY FOR LOSS OR DAMAGE TO THE CUSTOMER'S PROPERTY (OTHER THAN GOODS)**

Spectra shall only be liable to the Customer for loss of or damage to the Customer's property (other than Goods) caused by Spectra 's negligence or wilful default, such liability shall be limited to the lesser of the reasonable repair cost or replacement cost (with an item of the same age and in the same condition) of that property and USD 50,000 per incident or series of associated incidents. Save as set out in this Clause 8, Spectra shall not be liable for loss of or damage to the Customer's property (other than Goods) howsoever arising (whether caused by negligence, wilful default or otherwise).

## **9. LIMITATION OF LIABILITY**

Neither party to this Agreement shall be liable for any consequential, indirect, special or incidental damages under any provision of this Agreement or for any consequential, indirect, penal, special or incidental damages arising out of any act or failure to act hereunder.

## **10. INDEMNITY**

10.1 The Customer shall promptly indemnify Spectra against all costs (including the costs of investigating and defending any claims), expenses, claims, losses, liabilities, orders, awards, fines, proceedings and judgments of whatsoever nature howsoever assumed, incurred or suffered by Spectra, its sub-contractors or any member of the Spectra Group, their respective

employees, servants, agents, insurers or reinsurers as a result of or in connection with any of the following:

- 10.1.1 any breach by the Customer of any of the warranties or undertakings given or obligations undertaken by the Customer under this Agreement;
- 10.1.2 any cause arising from or with respect to the Goods for which Spectra is not responsible;
- 10.1.3 Spectra becoming liable to any other party (including to any customs authority, customs inspection stations, port and harbour authorities and any other authorities having legal jurisdiction over any element of the Services, Goods) and/or incurring additional costs by reason of Spectra carrying out the Customer's instructions; or
- 10.1.4 Spectra incurring liability in excess of its liability under the provisions of this Agreement regardless of whether such liability arises from, or in connection with a breach of contract, negligence or breach of duty by Spectra, its agents, servants or sub-contractors.

## **11. CLAIMS HANDLING**

- 11.1 Spectra shall notify the Customer in the event of any accident or damage arising out of or in connection with the Services and will give to the Customer and/or its insurers any information and assistance that the Customer and/or its insurers may require in respect of any accident, damage or claim.
- 11.2 The Customer will assist Spectra in pursuing claims against third parties (the **Third Parties**) whose acts or omissions have given rise to claims by the Customer against Spectra. Without prejudice to the generality of the foregoing, the Customer:
  - 11.2.1 will, on demand, assign to Spectra any claims it may have against Third Parties;
  - 11.2.2 consents to Spectra using its name in the context of any legal proceedings initiated to claim against Third Parties;
  - 11.2.3 will furnish Spectra with all information available relating to claims against Third Parties and Spectra shall have the right to appoint adjusters, assessors and/or surveyors and to control all negotiations, adjustments and settlements in connection with such claims; and
  - 11.2.4 undertakes not to claim against Third Parties on its own account.

## **12. INSURANCE**

The Customer shall be responsible for all risks in relation to the Goods and/or other assets, sufficient to cover its liability under this Agreement and as may be required by applicable law of the Territory.

## **13. INTELLECTUAL PROPERTY**

- 13.1 In the absence of prior written agreement to the contrary all Intellectual Property created by Spectra or any employee, agent or sub-contractor of Spectra in the course of performing the Services shall vest in Spectra.
- 13.2 The Customer grants Spectra a non-exclusive, non-transferable royalty-free licence to use the trade marks, logos and trade names of the Customer and/or the Customer Group (**Marks**) solely for the purpose of performing its obligations under this Agreement. Spectra's use of Marks is limited to applying them to the Goods in the form and manner specified by the Customer in the Specification, and not otherwise. The Customer shall indemnify Spectra against all liabilities, costs, expenses, damages and losses and all professional costs and

expenses suffered or incurred by Spectra arising out of or in connection with any claim made against Spectra for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the use of Marks in accordance with the terms of this Agreement.

#### **14. NON-SOLICITATION**

Each Party hereby undertakes with the other Party that (save with the prior written consent of the other Party) it will not either during the term of the Agreement or within twelve (12) months after the date of termination of the Agreement either on its own account or for any other person, firm or company, solicit, interfere with or endeavour to entice away any manager or other senior employee of the other Party or any such manager or senior employee of any company associated with the other Party with whom such Party has dealt in relation to the Agreement or any ancillary arrangements to the Agreement.

#### **15. CONSEQUENCES OF TERMINATION**

- 15.1 Upon termination of the Agreement for whatever reason, the Customer shall arrange for all the Goods at the Warehouse to be removed from the Warehouse as soon as possible (but in any event no later than the date of termination of this Agreement), provided that Spectra may, in its sole discretion, retain some or all of the Goods until all invoices issued in connection with this Agreement have been paid in full.

#### **16. FORCE MAJEURE**

- 16.1 Subject to the remaining provisions of this Clause 16.16, neither Party shall be liable to the other for any delay or non-performance of its obligations under the Agreement to the extent that such non-performance is due to a Force Majeure.

- 16.2 In the event that either Party is delayed or prevented from performing its obligations under this agreement by a Force Majeure, such party shall:

16.2.1 give notice in writing of such delay or prevention to the other Party as soon as reasonably possible, stating the commencement date and extent of such delay or prevention, the cause thereof and its estimated duration;

16.2.2 use all reasonable endeavours to mitigate the effects of such delay or prevention on the performance of its obligations under the Agreement; and

16.2.3 resume performance of its obligations as soon as reasonably possible after the removal of the cause of the delay or prevention.

- 16.3 As soon as practicable following the affected Party's notification, the Parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure and to facilitate the continued performance of the Agreement.

- 16.4 During any period during which any Party is prevented by Force Majeure from performing all or any of its obligations under the Agreement (**Period of Force Majeure**) the Agreement shall be deemed to be suspended in respect of the affected obligations until such time as is reasonably practicable after the expiry of such Period of Force Majeure at which time both Parties shall resume their obligations under this Agreement.

- 16.5 If:

16.5.1 Spectra is prevented by Force Majeure from providing the Services either at all or to a substantial extent; and

16.5.2 the Period of Force Majeure exceeds twenty one (21) days,

then at any time on or after the expiry of that period either Party may terminate this Agreement immediately by serving a written notice on the other Party.

- 16.6 If Spectra incurs any additional costs in complying with its obligation under Clause 16, the Customer shall pay the same to Spectra.

## **17. NOTICE**

Any notice given by either Party to the other in connection with any matter relating to this Agreement shall be given in writing and shall be sent by prepaid registered post return receipt requested or delivered by hand against signature for receipt to the recipient's address specified in the Confirmation or via electronic mail. A notice shall be effective from the date of its receipt.

## **18. ASSIGNMENT AND SUB-CONTRACTING**

- 18.1 Save as provided in Clause 18.2, neither Party shall assign, transfer or sub-contract any of its rights and obligations under the Agreement in whole or in part or the benefit thereof or its rights thereunder without the other Party's prior written consent (such consent not to be unreasonably withheld or delayed).

- 18.2 Spectra may sub-contract all or any of its obligations under the Agreement to any Spectra approved sub-contractors, provided that Spectra shall not thereby be relieved of any of its obligations hereby and Spectra shall be deemed to act as agent for its sub-contractors and any reference to " Spectra " shall be deemed to include any sub-contractor, with the intention that such sub-contractor shall have the benefit of the terms of this Agreement and collectively and together with Spectra shall be under no greater liability to the Customer or any other party than Spectra is hereunder.

- 18.3 Notwithstanding Clause 18.2, the carriage of any Goods by rail, sea, inland waterway or air is arranged by Spectra as agent of the Customer and shall be subject to the conditions of the rail, shipping, inland waterways or air carrier contracted to carry the Goods and Spectra shall be under no liability whatever to whomsoever and howsoever arising in respect of such carriage. Where the Goods are carried partly by road and partly by such other means of transport and the stage where the loss, damage or delay occurred is not known, such loss, damage or delay shall be deemed to have occurred while the Goods were being carried by road unless the contrary is proved by Spectra.

## **19. WAIVER**

The waiver by either Party of a breach or default of any of the provisions of the Agreement by the other Party shall not be construed as a waiver of any succeeding breach of the same or other provisions nor shall any delay or omission on the part of either Party to exercise or avail itself of any right, power or privilege that it has or may have hereunder operate as a waiver of any breach or default by the other Party.

## **20. ANNOUNCEMENTS**

The Parties agree that (save as necessitated by applicable statutory or regulatory requirements) neither of them will make any announcement to the public or any section thereof in connection with the existence of or operation of the Agreement without first obtaining the prior written consent of the other Party (such consent not to be unreasonably withheld or delayed) as to the text and method of such an announcement.

## **21. CONFIDENTIALITY**

- 21.1 Each Party agrees to treat as secret and confidential and not at any time nor for any reason to disclose or permit to be disclosed to any person or otherwise make use of or permit to be made use of any information supplied by or obtained from the other Party, including the Agreement and information relating to the Goods, Services, Charges, Customers, marketing, or

promotions, business affairs, operating methods, administration systems or finances or any such information relating to a supplier, customer or client of the other Party save to the extent that such information is:-

- 21.1.1 already in its possession other than as a result of a breach of this Clause 21;
  - 21.1.2 in, or subsequently becomes, in the public domain other than as a result of a breach of this Clause 21;
  - 21.1.3 required by law;
  - 21.1.4 disclosed to the professional advisers, auditors and bankers of each Party;
  - 21.1.5 disclosed after the other Party has given written approval; or
  - 21.1.6 used for the performance of the obligations under the Agreement.
- 21.2 Each Party undertakes to take all such steps as shall from time to time be reasonable to ensure compliance with the provisions of this Clause 21 by its employees, agents and any sub-contractors.
- 21.3 The restrictions in this Clause 21 shall continue to apply after the termination of the Agreement for a period of five (5) years.

## **22. DISPUTE RESOLUTION**

Any dispute arising out of or in connection with the Agreement will in the first instance be referred to the managers of each Party for discussion and resolution. If the dispute is not resolved within twenty-one (21) days of such referral, then either Party may proceed to commence legal proceedings. In any event nothing in this Clause 222 will restrict either Party's freedom to commence legal proceedings to preserve any legal right or remedy at any time while the above dispute resolution procedures are in progress or before or after they are invoked.

## **23. ANTI BRIBERY**

23.1 Each Party and its Group Companies agrees, confirms and undertakes that:

23.1.1 it has not and will not, and none of its employees, officers, directors, contractors, sub-contractors and agents has or will, directly or indirectly, pay, give, deliver, receive or agree (or undertake to pay, give, deliver, receive or agree) any bribe, pay-off, kick-back, gift, gratuity, commission, amount or other thing of value, or any interest-free loans, contributions or donations, in any way or form and whether in local or foreign currency, in the country where the Services are provided or any other place where such conduct relates to the Agreement, in each case in violation of any applicable laws, including any applicable anti-corruption legislation or similar legislation to any person including any government officials or employees, political parties, political party officials or political candidates or third persons with influence over government officials or employees; and

23.1.2 it has and shall maintain in place an ethics or compliance programme which implements internal procedures to prevent and detect violations of applicable laws of the Territory, and to promote ethical behaviour by and within each Party's organisation and business.

## **24. VALIDITY**

If any court or administrative body of competent jurisdiction shall find any provision of the Agreement to be invalid or unenforceable the invalidity or unenforceability of such provision shall not affect the other provisions of the Agreement and all provisions not affected by such

invalidity or unenforceability shall remain in full force and effect. The Parties hereby agree to attempt in good faith to substitute for any invalid or unenforceable provision, a valid and enforceable provision which achieves to the greatest extent possible the economic, legal and commercial objective of the invalid or unenforceable provision.

## **25. ENTIRE AGREEMENT**

### **25.1 The Agreement:**

25.1.1 comprises the entire agreement between the Parties with respect to the provision of the Services as from the date of the Confirmation and any representations or statements whether made orally or written elsewhere are hereby excluded provided always that this Clause 255 shall not exclude or limit any liability or any right which any Party may have in respect of pre-contractual statements made or given fraudulently; and

25.1.2 as from the date of the Confirmation supersedes all previous agreements and arrangements between the Parties with respect to the provision of the Services.

## **26. RELIANCE**

The Customer acknowledges that it does not enter into the Agreement in reliance on any representation, warranty or other undertaking or understanding not fully reflected in the written terms of the Agreement and all conditions, warranties of other terms implied by statute or common law are hereby excluded to the fullest extent permitted by law.

## **27. AMENDMENTS TO BE IN WRITING**

Any modification, variation, amendment or addition to the Agreement must be in writing and signed by a duly authorised representative of each of the Parties.

## **28. NO PARTNERSHIP**

Nothing in the Agreement shall constitute or be deemed to constitute either Party as the employee, agent, joint-venturer, servant or partner of the other Party.

## **29. PROPERTY RIGHTS**

This Agreement does not create and shall not be deemed to create any form of demise, leasehold interest, tenancy, licence or any other form of proprietary interest in the Warehouse or any property or land surrounding the Warehouse in favour of the Customer.

## **30. GOVERNING LAW**

This Agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be construed in accordance with and governed in accordance with the laws of Sri Lanka and shall be subject to the exclusive jurisdiction of the Courts of Sri Lanka.