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To: Transport Industry Operators

**HAWB**

The limit of liability for international carriage of cargoes by air under the Montreal Convention has been revised from 19 SDR/Kg to 22 SDR/Kg of the gross weight of the cargoes effective from 28 December 2019. We have received many enquiries from freight forwarders about changing their house Air Waybills' terms to cope with the new limit of liability. We would like to take this opportunity to discuss some essential terms in house Air Waybills.

Period of responsibility

On the front page of the house Air Waybill, it should be printed clearly as "Place/Airport of departure" and "Place/Airport of destination". It should be avoided to use such terms as "Airport of departure" or "Airport of destination". Otherwise, the freight forwarders' business will be limited to those shipments from airport to airport only. But the freight forwarders are doing a lot of "door to door" and "warehouse to warehouse" business every day.

Definition of carrier

The freight forwarder is the carrier under its own house Air Waybill contract with the shipper and consignee. The freight forwarder cannot state that the carrier under its own house Air Waybill contract is an airline. The airline has not given such authority to the freight forwarder to say so. The airline is only the carrier under its own Master Air Waybill contract.

Montreal Convention

This house Air Waybill term stipulates that the Montreal Convention applies to the carriage of the cargoes by air.

Uncollected cargoes

This house Air Waybill contract term gives the freight forwarder the right to sell or dispose of the uncollected cargoes. Without this contract term, the freight forwarder may be liable to the shipper or consignee for conversion if the freight forwarder sells or disposes of the uncollected cargoes without any authority.

Particular and General lien

This house Air Waybill contract term gives the freight forwarder the right to lien the cargoes if the shipper or consignee fails to pay off any outstanding debts due to the freight forwarder no matter the outstanding debts are related to the cargoes under the house Air Waybill or not.

Freight charges

This house Air Waybill contract term stipulates that (i) the freight charges shall be deemed fully earned and non-returnable upon receipt of the cargoes by the freight forwarder, (ii) the shipper or consignee shall not reduce the freight charges on account of any claim, counterclaim or set-off, and (iii) the carrier shall be entitled to interest (e.g. 2% per month) if the shipper or consignee fails to pay the freight charges timely (e.g. within one month).

Liberty to carry

This house Air Waybill contract term gives the right to the freight forwarder to decide on the means, manner, routes and procedures in the performance of the services under the house Air Waybill contract.

Limitation of liability

This house Air Waybill contract term gives the right to the freight forwarder to limit its liability to 22 SDR per Kg of the gross weight of the cargoes concerned for cargo loss, damage, delay, misdirection, misdelivery and any other cargo claims no matter such incidents happen during the air carriage or not.

Per event limit

This house Air Waybill contract term gives the freight forwarder a further limit of liability per event (e.g. 200,000 SDR per event).

Frustration

This house Air Waybill contract term gives the right to the freight forwarder to terminate and/or abandon the services if the services are affected by any risk, delay, hindrance, difficulty and/or disadvantage of any kind whatsoever (e.g. airport congestion, strike, the failure of the shipper or consignee to pay the freight charges for more than 2 months).

Written complaint time bar

This house Air Waybill contract term discharges the freight forwarder of all liability if the consignee does not complain in writing to the freight forwarder within 14 days (for cargo damage) or 21 days (for cargo delay).

Legal action time bar

This house Air Waybill contract term discharges the freight forwarder of all liability if the shipper or consignee does not sue the freight forwarder within 2 years.

Law and jurisdiction

This house Air Waybill contract term stipulates what law (e.g. the Hong Kong law) governs the contract and what court (e.g. the Hong Kong courts) exclusively determines claims or disputes.

We suggest freight forwarders check their own house Air Waybills to see whether the above contract terms are contained therein.

Please feel free to contact us if you have any questions about house Air Waybills.

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