

BEFORE THE
FEDERAL MARITIME COMMISSION

PETRA PET, INC. (a/k/a PETRAPPORT) :

Complainant, :

v. :

Docket No. 11-14

PANDA LOGISTICS LIMITED; PANDA
LOGISTICS CO., LTD. (f/k/a PANDA INT'L
TRANSPORTATION CO., LTD.); and RDM
SOLUTIONS, INC. :

Respondents. :

PANDA LOGISTICS LIMITED AND PANDA LOGISTICS CO., LTD.'S
REVISED APPENDIX

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Limited and Panda Logistics Co., Ltd.*

**PANDA LOGISTICS LIMITED AND PANDA LOGISTICS CO., LTD.'S (f/k/a PANDA
INT'L TRANSPORTATION CO., LTD.) APPENDIX**

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TAB 1

Declaration of Betty Sun

1. My name is Betty Sun. I am the Overseas Manager for Panda Global (Beijing) Co., Ltd., a branch of Panda Logistics Co., Ltd. I have held this position since 2003. This Declaration is based upon my personal knowledge.

2. Panda Logistics Limited ("Panda Logistics") is a corporation organized and existing pursuant to the laws of Hong Kong with its principal place of business at 51F, Block B, Profit Ind. Bldg., Kwai Chung, N.T., Hong Kong.

3. Panda Logistics Co., Ltd. ("Panda Int'l") is a corporation organized and existing pursuant to the laws of the Republic of China with its principal place of business at 5F, No. 209, Sec. 3, Civic Blvd., Taipei, Taiwan 10492.

4. Panda Logistics and Panda Int'l are foreign based non-vessel operating common carriers (NVOCCs) registered with the Federal Maritime Commission, that provide ocean transportation services.

5. As NVOCCs Panda Logistics and Panda Int'l transported goods under their bills of lading. Panda Logistics and Panda Int'l's bills of lading have terms and conditions that obligate shippers and consignees to pay for freight and charges. See Terms and Conditions at Panda Appendix 2.

6. In 2003 or thereabouts, Mario Ruiz, who was working for Amber Worldwide Logistics at that time, contacted Panda on behalf of Petra Pet. Inc. ("Petra"). Mr. Ruiz identified Petra as a company that imports pet treats from China to the United States. Mr. Ruiz indicated that Petra was his client and requested that Panda quote rates for Petra's shipments.

7. Panda had no relationship with Mr. Ruiz or his company prior to his contacting Panda on behalf of Petra.

8. Neither I nor anyone else from Panda has ever met Mr. Ruiz.

9. Subsequently, Mr. Ruiz left Amber Worldwide Logistics and formed Worldport Logistics. Later Worldport Logistics's name was changed to RDM Solutions, Inc. ("RDM").

10. In an email to me dated August 30, 2005, Mr. Ruiz told me that he anticipated that Worldport would be able to provide Panda "with all of the services expected [from] a freight forwarder . . ." See Petra Appendix 4.

11. At Amber Worldwide Logistics, at Worldport Logistics, and subsequently at RDM, Mr. Ruiz sought rates from Panda and acted as an agent for Petra, arranging for international freight and transportation services.

12. Mr. Ruiz has provided such services for Petra for approximately 10 years.

13. Mr. Ruiz took actions consistent with someone acting as an agent on behalf of a shipper, such as complaining that Panda's transit time was too slow. See, e.g., Petra Appendix 3.

14. Panda transported shipments on behalf of Petra pursuant to instructions from RDM.

15. Over an extended period of time, Petra provided instructions to RDM as to how to handle Petra shipments.

16. Panda was instructed to bill RDM for transportation services it provided to Petra.

17. It is not unusual for Panda to be instructed to bill third parties, such as forwarders and brokers, for transportation services it provides to shippers. This is frequently done as a matter of convenience for the shipper who may not want to handle the logistics involved in arranging and paying directly for the transportation at issue.

18. In agreeing to bill a third party for transportation services provided, Panda may, as it did here, indicate on its bills of lading the third party under Freight Amount or Freight Collect.

19. In agreeing to bill a third party for transportation services provided, Panda does not release the consignee or shipper from its obligation to pay for transportation charges.

20. Panda never released Petra from its obligation to pay for the transportation services it provided to Petra.

21. Petra received and accepted the goods transported by Panda Logistics.

22. Although Mr. Ruiz represented in an email to me that that RDM is an FMC licensed NVOCC, RDM has never served in that capacity in any transportation handled by Panda.

23. RDM has never acted as a co-loader on transportation handled by Panda and to my knowledge has never issued a bill of lading on shipments handled by Panda.

24. All bills of lading issued by Panda acting in its capacity as an NVOCC for Petra are "freight collect."

25. Beijing Jaguar was a Panda affiliate in Beijing, China that also provided transportation services to the United States issuing Panda Int'l bills of lading for these services as authorized by Panda Int'l. In February of 2007, Beijing Jaguar was re-named Panda Global (Beijing) Co. Ltd.

26. Beijing Jaguar provided transportation services for Petra in which RDM acted on Petra's behalf.

27. Around August of 2006, Beijing Jaguar provided transportation services on behalf of Petra. RDM failed to make timely payments on behalf of Petra for such services and as a result, Beijing Jaguar refused to release bills of lading in its possession and held cargo until it

was paid freight and related charges. See August 22, 2006 email to Patty De Avila, the Office Manager of Petra, Panda Appendix 3.

28. On that same date, Mario Ruiz wrote to me referencing the email that it had received from his "client," Petra, and requesting that Panda notify RDM if it was holding cargo due to nonpayment, rather than notifying RDM's client, Petra. See August 22, 2006 email correspondence from Mario Ruiz to me, attached as Panda Appendix 3.

29. In that correspondence, RDM also informed me that he was sending payment to cover Petra's transportation costs in order to obtain the release of the cargo. See Panda Appendix 3.

30. RDM made the promised payment on behalf of Petra and the cargo was released.

31. On March 4, 2008, Panda quoted rates to RDM. See email attached as Panda Appendix 4. In that correspondence, Panda requested that if RDM had other quantities of goods it wanted moved, it should check with Panda before offering rates to RDM's clients. "If you have other commodities, please check with us before you offer to your client."

32. It is not unusual that a party in RDM's capacity would not want the NVOCC to disclose to the shipper the rates the NVOCC is charging for fear that its customer might deal directly with the NVOCC.

33. On July 26, 2010, I sent an email to Patty DeAvila, Petra's Office Manager, regarding overdue freight invoices. See July 26, 2010 email attached as Petra Appendix 28. I informed her that Panda has moved large quantities of shipments for Petra and that in doing so, Panda was required to pay the air freight as of the invoice date and had to advance payments to the shipping lines in order to get original bills of lading (B/L's). I then wrote that because Petra

is a VIP client, Panda had agreed with RDM for payment terms more favorable than those afforded its other clients.

34. In that same correspondence, I informed Petra that overdue freight invoices had not been paid and that payment terms would no longer be advanced.

35. In response to that correspondence, Petra did not inform Panda that it had paid RDM and that RDM was Panda's agent.

36. It was only in December of 2010, after Panda refused to release goods in its possession until after it was paid for transportation services provided and after RDM disappeared, that Petra for the first time asserted that RDM was Panda's agent and that payment by Petra to RDM satisfied its obligations to Panda. Petra had never previously made such assertion, even in 2006 when Petra had previously made payments to RDM and RDM failed to timely forward such payments to Beijing Jaguar or Panda.

37. Panda has never held out RDM as an agent of Panda.

38. RDM has never acted as an agent for Panda.

I hereby declare, under the penalty of perjury, that the foregoing is true and correct.

DATE: June 13, 2012

Betty Sun



TAB 2

2A

Conditions of Carriage

1 DEFINITIONS

'Carrier' means PANDA LOGISTICS LIMITED herein sometimes referred to as 'P.L.L.'

'Merchant' means and includes the shipper, the consignee, the holder of the bill of lading, and the receiver or owner of the goods.

'Holder' means any person for the time being in possession of this Bill of Lading to whom the property in the Goods has passed on or by reason of the consignments of the Goods or the endorsement of this Bill of Lading or otherwise.

'Container' includes any container, trailer, transportable tank, flat or pallet or any similar article used to consolidate goods.

'Hague Rules' mean the provisions of the International Convention for the Unification of Certain Rules relating to Bills of Lading signed at Brussels on 25 August 1924.

'Hague Visby Rules' means the Hague Rules as amended by the protocol signed at Brussels on 23rd February 1968.

2. CARRIER'S TARIFF

The terms of the Carrier's applicable Tariff are incorporated herein. Copies of the relevant provisions of the applicable Tariff are obtainable from the Carrier or his agents upon request. In the case of inconsistency between this Bill of Lading and the applicable Tariff, this Bill of Lading shall prevail.

3. WARRANTY

The Merchant warrants that in agreeing to the terms hereof he is or has the authority of the person owning or entitled to the possession of the goods and this bill of lading.

4. SUB-CONTRACTING

The Carrier shall be entitled to sub-contract on any terms the whole or any part of the carriage, but the contract evidenced by this bill of lading is between the Merchant and P.L.L. and it is agreed that P.L.L. only shall be liable as Carrier under this contract.

The Merchant agrees that (other than the Carrier) no person (which expression shall include any servant or agent of P.L.L. or any independent contractor or carrier employed by P.L.L.) to carry out any of its obligations hereunder shall in any circumstances be liable to the Merchant for any loss, damage or delay of whatsoever kind howsoever caused to the goods and that if any such person is contrary to this provision held liable the Merchant will indemnify P.L.L. against all consequences thereof. Without prejudice to the foregoing every such person shall be entitled to the benefit of all provisions herein benefiting the Carrier as if such provisions were expressly for his benefit, and in entering into this contract the Carrier to the extent of these provisions does so not only on his own behalf but also as agent and trustee for such persons who shall to this extent be or be deemed to be parties to this contract.

5. CARRIER'S RESPONSIBILITY WHEN THE STAGE OF CARRIAGE WHERE LOSS OF OR DAMAGE TO THE GOODS IS NOT KNOWN

(1) The Carrier shall be liable for loss of or damage to the goods occurring between the time when he receives the goods for carriage and the time of delivery unless such loss or damage results from:
(a) a wrongful act or omission of the Merchant,
(b) a failure to comply with the orders of any person or Authority given them,
(c) an inefficiency of or defective condition of packing or stowage,
(d) inherent vice of the goods,
(e) the handling, loading, stowage or unloading of the goods by or on behalf of the Merchant,
(f) strikes, lock-outs, stoppage or restraint of labour from whatever cause whether partial or general,
(g) any cause or event which the Carrier could not avoid and the consequences of which he could not prevent by the exercise of reasonable diligence;

provided that the burden of proving that such loss or damage was due to one or more of the above causes shall rest upon the Carrier save that when the Carrier establishes that in the circumstances of the case the loss or damage could be attributed to one or more of the causes or events specified in (c) to (f) inclusive above it shall be presumed that it was so caused. The Merchant shall however be entitled to prove that the loss or damage was not in fact caused either wholly or partly by one or more of these causes or events.

(2) Subject to clause (1) hereof when the Carrier is liable under the provisions of this clause for compensation in respect of loss or damage to the goods such compensation shall in no circumstances exceed USD 50 per kilo of the gross weight of the goods lost or damaged, unless it is proved that the loss or damage resulted from an act or omission of the Carrier with the intent to cause damage recklessly and with the knowledge that damage would probably result.

6. CARRIER'S RESPONSIBILITY WHEN THE STAGE OF CARRIAGE WHERE LOSS OF OR DAMAGE TO THE GOODS IS KNOWN

Notwithstanding the provisions of clause 5 hereof and subject to clause 16 hereof if it can be proved where the loss or damage to the goods occurred, the liability of the Carrier in respect of such loss or damage shall be determined:

(1) by the provisions contained in any International Convention or National Law which provisions

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

(b) would have applied, force of law if (i) the Merchant had made a separate and direct contract with the Carrier (as though he was the carrier referred to in the applicable Convention or Law) in respect of the particular stage of transport where the loss or damage occurred and received as evidence thereof any particular document which must be issued if such International Convention or National Law shall apply and (ii) such contract was governed by the law of the State in which the loss or damage occurred, or in which the port of shipment is situate as the case might be.

(2) Where no such convention or Law applied under paragraph (1) above if the loss or damage is known to have occurred on or inland waterways, by the provisions of the law in which event reference therein to carriage shall be deemed to include carriage on inland waterways, and in no case shall the liability of the Carrier exceed 100 pounds per package or unit.

(3) by the provisions of clause 5 where neither paragraph (1) nor (2) above applies.

7. SPECIAL PROVISIONS RELATING TO CLAUSES 5 AND 6

(1) Notice of Loss Time Bar

(a) Subject to any provision herein to the contrary

unless notice of loss of or damage to the goods and the general nature of it be given in writing to the Carrier or his agent at the place of delivery before or at the time of the removal of the goods into the custody of the person entitled to delivery thereof under this bill of lading or, if the loss or damage be not then apparent, within seven consecutive days thereafter, such removal shall be prima facie evidence of the delivery by the Carrier of the goods described in the bill of lading.

(b) Subject to any provision herein to the contrary, the Carrier shall be discharged of all liability under this bill of lading unless suit is brought and written notice thereof given to the Carrier within nine months after delivery of the goods or the date when the goods should have been delivered which date in the case of total loss of the goods shall in the absence of evidence to the contrary be deemed to be a date two calendar months after the goods have been received for transportation.

(2) Delay

The Carrier does not undertake that the goods shall arrive at the port of discharge or place of delivery at any particular time or to meet any particular market of use and the Carrier shall not be liable for any direct, indirect or consequential loss or damage caused by delay except only and to the extent that liability for delay arises under clause 6(4) hereof in which event the amount of compensation therefor shall not exceed the element of freight applicable to the relevant stage of transport so long this limit is not contrary to the applicable International Convention or National Law referred to in clause 6(1) hereof.

(3) Ad Valorem

(a) Higher compensation for loss of or damage to goods may be claimed only when, with the consent of the Carrier, the value of the goods declared in writing by the Shipper before shipment which exceeds the limit applicable under clauses 5 and 6 has been stated in this bill of lading and extra freight paid if required. In that case the amount of the declared value shall be substituted for that limit. Any partial loss or damage shall be adjusted pro rata on the basis of such declared value.

(b) The Merchant agrees and acknowledges that unless such a declaration is made the Carrier has no knowledge and can have no means of knowledge of the value of the goods.

(4) Supply of Containers

The terms of this bill of lading shall govern the responsibility of the Carrier in connection with or arising out of the supply of a container to the Merchant whether before or after the goods are received by the Carrier for transportation of delivered to the Merchant.

(5) General

Save as otherwise provided herein, the Carrier shall in no circumstances be liable for direct or indirect or consequential loss or damage and the defenses and limits of liability provided for herein shall apply in any action against the carrier whether it is founded on contract or in tort.

8. SHIPPER-PACKED CONTAINERS

If a Container has not been packed or filled by or on behalf of the Carrier, the Carrier shall not be liable for loss or damage to the contents and the Merchant shall indemnify the Carrier against any loss, damage liability or expense incurred by the Carrier if such loss, damage, liability or expense has been caused by:

(a) the manner in which the Container has been packed or filled, or

(b) the unsuitability of the goods for carriage in Containers, or

(c) the unsuitability or defective condition of the Container arising without any want of due diligence on the part of the Carrier to make the Container reasonably fit for the purpose for which it is required, or

(d) the unsuitability or defective condition of the Container which would have been apparent upon reasonable inspection by the Merchant at or prior to the time when the Container was packed or filled.

9. INSPECTION OF GOODS

The Carrier or any person to whom the Carrier has sub-contracted the carriage or any person authorized by the Carrier shall be entitled, but under no obligation to open any Container or package therein at any time and to inspect the contents.

10. CARRIAGE AFFECTED BY CONDITION OF GOODS

If it appears at any time that the goods or any part thereof cannot safely or properly be carried or carried further either at all or without incurring any additional expense or taking any measures in relation to the container or the goods or any part thereof, the Carrier may without notice to the Merchant abandon the carriage thereof and/or take any measures and/or incur any reasonable additional expense to carry or to continue the carriage or to store the goods ashore or afloat under cover or in the open, at any place, which abandonment or storage shall be deemed to constitute due delivery under this bill of lading. The Merchant shall indemnify the Carrier against any reasonable additional expense so incurred.

11. DESCRIPTION OF GOODS

(1) This Bill of Lading shall be prima facie evidence of the receipt by the Carrier in apparent good order and condition except as otherwise noted of total number of Containers or other packages of units specified overleaf.

(2) No representation is made by the Carrier as to the weight, contents, measure, quantity, quality, description, condition, marks, numbers or value of the Goods and the Carrier shall be under no responsibility whatsoever in respect of such description or particulars.

12. SHIPPER'S RESPONSIBILITY

(1) The Shipper warrants to the Carrier that the particulars relating to the Goods as set out overleaf have been checked by the Shipper on receipt of this Bill of Lading and that such particulars and any other particulars furnished by or on behalf of the Shipper are correct.

(2) The Shipper shall indemnify the Carrier against all loss or damage (including interest) or resulting from inaccuracies in or inadequacy of such particulars or from any other cause in connection with the goods for which the Carrier is not responsible.

13. FREIGHT

(1) Freight and charges shall be deemed fully earned on receipt of the Goods by the Carrier and shall be paid and be non returnable in any event.

(2) The Merchant's attention is drawn to the stipulation concerning currency in which the freight and charges are to be paid, rate of exchange, devaluation and other contingencies relative to freight and charges in the applicable tariff.

(3) The freight has been calculated on the basis of particulars furnished by or on behalf of the Shipper. The Carrier may at any time open any Container or other package or unit in order to reweigh, re-measure or revalue the contents and if the particulars furnished by or on behalf of the Shipper are incorrect it is agreed that a sum equal to either five times the difference between the correct freight and the freight charged or to double the correct freight less the freight charged, whichever sum is the smaller, shall be payable as liquidated damages to the Carrier.

14. LIEN

The Carrier shall have a lien on the Goods and any documents relating thereto for all sums payable to the Carrier under this contract and for general average contributions to homeward due and for the cost of recovering the same, and for that purpose shall have the right to sell the Goods by public auction or private treaty without notice to the Merchant.

15. OPTIONAL STOWAGE

(1) The Goods may be stowed by the Carrier in Containers or similar articles of transport used to consolidate Goods.

(2) Goods packed in Containers whether by the Carrier or the Merchant may be carried on or under deck without notice to the Merchant. Such Goods (other than livestock) whether carried on deck or under deck shall participate in general average and shall be deemed to be within the definition of goods for the purposes of the Hague Rules, or the Hague Visby Rules.

16. DECK CARGO AND LIVESTOCK

Neither the Hague Rules nor the Hague Visby Rules if otherwise applicable shall apply to this contract where the goods carried hereunder consist of livestock and goods (not being goods stowed in Containers other flats or pallets) which are stated herein to be and are carried on deck. Such goods and livestock whether later are carried on deck or underdeck, are carried without responsibility on the part of the Carrier for loss or damage of whatsoever nature arising during carriage by sea whatever caused by unseaworthiness or negligence or any other cause whatsoever.

17. METHODS AND ROUTE OF TRANSPORTATION

(1) The Carrier may at any time and without notice to the Merchant

(a) use any means of transport or storage whatsoever,

(b) transfer the goods from one conveyance to another including transshipping or carrying the same on another vessel than that named overleaf or by any other means of transport whatsoever,

(c) unpack and remove goods which have been packed into a Container and forward the same in a Container or otherwise,

(d) use or proceed by any route in his discretion (whether or not the nearest or most direct or customary or advertised route) and use or proceed to or stay at any place or port whatsoever once or more often and in any order,

(e) load or unload the goods at any place or port (whether or not any such port is named overleaf as the Port of Loading or Port of Discharge and store the goods at any such place or port,

(f) comply with any orders or recommendations given by any government or authority or any person or body acting or purporting to act as or on behalf of such government or authority or having under the terms of the insurance on the conveyance employed by the Carrier the right to give orders or directions,

(g) permit the vessel to proceed with or without pilots.

(2) The liberties set out in sub-paragraph (1) may be invoked by the Carriers for any purpose whatsoever whether or not connected with the carriage of the goods including unloading, repairs, towing or being towed, adjusting instruments, dry-docking and assisting vessels in all situations. Anything done in accordance with sub-paragraph (1) or any delay arising therefrom shall be deemed to be within the contractual carriage and shall not be a deviation.

18. MATTERS AFFECTING PERFORMANCE

If it shall be considered by the Carrier at any time that the carriage or continuance thereof may subject the ocean vessel or other form of transport to any hindrance, risk, delay, difficulty or disadvantage of any kind and howsoever arising (even though the circumstances giving rise to such hindrance, risk, delay, difficulty or disadvantage existed at the time this contract was entered into or the goods were accepted for carriage) and which cannot be avoided by the exercise of reasonable endeavours, the Carrier (whether or not the carriage is commenced) may without notice to the Merchant treat the performance of this contract as terminated and place the goods or any part of them at the Merchant's disposal at any place or port which the Carrier may deem safe and convenient whereupon the responsibility of the Carrier in respect of such goods shall cease. The Carrier shall nevertheless be entitled to full freight on the goods received for carriage and the Merchant shall pay any additional costs of carriage to and delivery and storage at such place or port.

19. DANGEROUS GOODS

(1) The Merchant undertakes not to tender for transportation any Goods which are of a dangerous, inflammable, radio active or damaging nature without previously giving written notice of their nature to the Carrier and obtaining his express consent & marking the Goods and the Container or other covering on the outside as required by any laws or regulations which may be applicable during the carriage.

(2) If the requirements of sub-paragraph (1) are not complied with the Merchant shall indemnify the carrier against all loss, damage or expense arising out of the Goods being tendered for transportation or handled or carried by the Carrier.

(3) Goods which in the opinion of the Carrier are or at any time become dangerous, inflammable, radio active or damage may at any time or place, be unloaded, destroyed or rendered harmless without compensation, and if the Merchant has not given notice of their nature to the Carrier under sub-paragraph (1) above, the Carrier shall be under no liability to make any general average contribution in respect of such Goods.

20. REGULATIONS RELATING TO GOODS

The Merchant shall comply with all regulations or requirements or customs, port and other authorities and shall bear and pay all duties, taxes, fines, imposts, expenses or losses incurred or suffered by reason thereof or

by reason of any illegal, incorrect or insufficient marking, unloading or addressing of the goods, and shall indemnify the Carrier in respect thereof.

21. NOTIFICATION AND DELIVERY

(1) Any mention herein of fixtures to be notified of the arrival of the goods is solely for information of the Carrier, and failure to give such notification shall not involve the Carrier in any liability or relieve the Merchant of any obligation hereunder.

(2) The Merchant shall take delivery of the goods within the time provided for in the Carrier's applicable Tariff (See Clause 2).

(3) If the Merchant fails to take delivery of the goods or part of them within 21 days of its becoming due under sub-paragraph (2) above the Carrier may without notice either:

(a) unpack the goods or that part thereof and/or store the goods or that part thereof ashore, afloat, in the open or under cover in which event such storage shall constitute due delivery hereunder, and thereupon all liability whatsoever of the Carrier in respect of the goods or that part thereof shall cease and the cost of such storage (if paid or payable by the Carrier) shall forthwith upon demand be paid by the Merchant to the Carrier, or

(b) if in his opinion the goods are likely to deteriorate, decay, become worthless or incur charges whether for storage or otherwise in excess of their value, sell or dispose of the goods and apply the proceeds of sale in reduction of any amount due to the Carrier from the Merchant under this bill of lading.

22. BOTH-TO-BLAME COLLISION CLAUSE

If the (carrying) ship comes into collision with another ship as a result of negligence on the other ship and any act, neglect or default in the navigation or the management of the carrying ship, the Merchant undertakes to pay the Carrier, or where the Carrier is not the owner and in possession of the carrying ship, to pay to the Carrier as trustee for the owner and/or demise charterer of the carrying ship, a sum sufficient to indemnify the Carrier and/or the owner and/or demise charterer of the carrying ship against all loss or liability to the other or non-carrying ship or her owners in so far as such loss or liability represents loss of or damage to or any claim whatsoever of the Merchant payable by the other or non-carrying ship or her owners to the Merchant and set-off recouped or recovered by the other or non-carrying ship or her owners as part of their claim against the carrying ship or her owner or demise charterer of the carrying ship. The foregoing provisions shall also apply where the owners, operators or those in charge of any ship or ships or objects other than or in addition to, the colliding ships or objects are at fault in respect of a collision, contract, stranding or other accident.

23. GENERAL AVERAGE

(1) General average shall be adjusted at any port or place in the option of the Carrier in accordance with the York-Antwerp Rules, 1974 provided that where an adjustment is made in accordance with the law and practice of the United States of America or of any other country having the same or similar law or practice the following sub-clauses (a) and (b) shall apply:

(a) In the event of accident, danger, damage or disaster before or after the commencement of the voyage, resulting from any cause whatsoever, whether due to negligence or not, for which, or for the consequences of which the Carrier is not responsible, by statute, contract or otherwise, the Carrier and the Merchant shall contribute with the Carrier in general average to the payment of any sacrifices, losses or expenses of a general average nature that may be made or incurred and shall pay salvage and special charges incurred in respect of the goods.

(b) If a salving vessel is owned or operated by the Carrier salvage shall be paid for as fully as if the said salving vessel belonged to strangers.

(2) If the Carrier delivers the goods without obtaining security for general average contributions, the Merchant, by taking delivery of the goods, undertakes personal responsibility to pay such contributions and to provide such cash deposit or other security for the estimated amount of such contributions as the Carrier shall reasonably require.

(3) The Carrier shall be under no obligation to exercise any lien for general average contributions due to the Merchant.

24. Disputes arising under this Bill of Lading may only be instituted in the country where the Carrier has his principal place of business and shall be decided according to the law of such country.

25. REFRIGERATED CARGO

(1) The Merchant undertakes not to tender for transportation any goods which require refrigeration without previously giving written notice of their nature and particularly temperature range to be maintained and in the case a refrigerated container packed by or on behalf of the Merchant further undertakes that the goods have been properly stowed in the container and that its thermosatic controls have been adequately set by him before receipt of the goods by the Carrier. If the above requirements are not complied with, the Carrier shall not be liable for any loss of or damage to the goods whatsoever arising.

(2) The Carrier shall not be liable for any loss of or damage to the goods arising from latent defects, derangement, breakdown, stoppages of the refrigerating machinery, plans, insulation and/or any apparatus of the container, vessel, conveyance, and any other facilities, provided that the Carrier shall before or at the beginning of the transport exercise due diligence to maintain the refrigerated container in an efficient state.

26. CONTAINER AND VEHICLE DEMURRAGE

Attention is drawn to the Carrier's terms and conditions for container and Vehicle Demurrage which apply to this contract, and which may be obtained from the Carriers or their Agents.

27. REPOSITIONING OF CONTAINERS

Where containers owned or leased by the Carrier are unpacked at the Merchants premises, the Merchant is responsible for returning the empty containers with interiors brushed and clean to the port or place of discharge or to the point or place designated by the Carrier. His servants or Agents, within the time prescribed to them, should a container not be returned within the prescribed time the Merchant shall be liable for any demurrage, less or expenses which may arise from such non-return.

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2B

Definitions

"Freight Forwarder" means the Multimodal Transport Operator who issues this FBL and is named on the face of it and assumes liability for the performance of the multimodal transport contract as a carrier.

"Merchant" means and includes the Shipper, the Consignor, the Consignee, the Holder of this FBL, the Receiver and the Owner of the Goods.

"Consignor" means the person who concludes the multimodal transport contract with the Freight Forwarder.

"Consignee" means the person entitled to receive the goods from the Freight Forwarder.

"Taken in charge" means that the goods have been handed over to and accepted for carriage by the Freight Forwarder at the place of receipt evidenced in this FBL.

"Goods" means any property including live animals as well as containers, pallets or similar articles of transport or packaging not supplied by the Freight Forwarder, irrespective of whether such property is to be or is carried on or under deck.

1. Applicability

Notwithstanding the heading "FIATA Multimodal Transport Bill of Lading (FBL)" these conditions shall also apply if only one mode of transport is used.

2. Issuance of this FBL

2.1.

By issuance of this FBL the Freight Forwarder

- a) undertakes to perform and/or in his own name to procure the performance of the entire transport, from the place at which the goods are taken in charge (place of receipt evidenced in this FBL) to the place of delivery designated in this FBL ;
- b) assumes liability as set out in these conditions.

2.2.

Subject to the conditions of this FBL the Freight Forwarder shall be responsible for the acts and omissions of his servants or agents acting within the scope of their employment, or any other person of whose services he makes use for the performance of the contract evidenced by this FBL, as if such acts and omissions were his own.

3. Negotiability and title to the goods

3.1.

This FBL is issued in a negotiable form unless it is marked "non negotiable" It shall constitute title to the goods and the holder, by endorsement of this FBL, shall be entitled to receive or to transfer the goods herein mentioned.

3.2.

The information in this FBL shall be prima facie evidence of the taking in charge by the Freight Forwarder of the goods as described by such information unless a contrary indication, such as "shipper's weight, load and count", "shipper-packed container" or similar expressions, has been made in the printed text or superimposed on this FBL. However, proof to the contrary shall not be admissible when the FBL has been transferred to the consignee for valuable consideration who in good faith has relied and acted thereon.

4. Dangerous Goods and Indemnity

4.1.

The Merchant shall comply with rules which are mandatory according to the national law or by reason of International Convention, relating to the carriage of goods of a dangerous nature, and shall in any case inform the Freight Forwarder in writing of the exact nature of the danger, before goods of a dangerous nature are taken in charge by the Freight Forwarder and indicate to him, if need be, the precautions to be taken.

4.2.

If the Merchant fails to provide such information and the Freight Forwarder is unaware of the dangerous nature of the goods and the necessary precautions to be taken and if, at any time, they are deemed to be hazard to life or property, they may at any place be unloaded, destroyed or rendered harmless, as circumstances may require, without compensation. The Merchant shall indemnify the Freight Forwarder against all loss, damage, liability, or expense arising out of their being taken in charge or their carriage, or of any service incidental thereto.

The burden of proving that the Freight Forwarder knew the exact nature of the danger constituted by the carriage of the said goods shall rest on the Merchant.

4.3.

If any goods shall become a danger to life or property, they may in like manner be unloaded or landed at any place or destroyed or rendered harmless. If such danger was not caused by the fault and neglect of the Freight Forwarder he shall have no liability and the Merchant shall indemnify him against all loss, damage, liability and expense arising therefrom.

5. Description of Goods and Merchant's Packing and Inspection

5.1.

The consignor shall be deemed to have guaranteed to the Freight Forwarder the accuracy, at the time the goods were taken in charge by the Freight Forwarder, of all particulars relating to the general nature of the goods, their marks, number, weight, volume and quantity and, if applicable, to the dangerous character of the goods, as furnished by him or on his behalf for insertion on the FBL.

The consignor shall indemnify the Freight Forwarder against all loss, damage and expense resulting from any inaccuracy or inadequacy of such particulars.

The consignor shall remain liable even if the FBL has been transferred by him.

The right of the Freight Forwarder to such indemnity shall in no way limit his liability under this FBL to any person other than the consignor.

5.2.

The Freight Forwarder shall not be liable for any loss, damage or expense caused by defective or insufficient packing of goods or by inadequate loading or packing within containers or other transport units when such loading or packing has been performed by the Merchant or on his behalf by a person other than the Freight Forwarder, or by the defect or unsuitability of the containers or other transport units supplied by the Merchant, or if supplied by the Freight Forwarder if a defect or unsuitability of the container or other transport unit would have been apparent upon reasonable inspection by the Merchant.

The Merchant shall indemnify the Freight Forwarder against all loss, damage, liability and expense so caused.

6. Freight Forwarder's Liability

6.1.

The responsibility of the Freight Forwarder for the goods under these conditions covers the period from the time the Freight Forwarder has taken the goods in his charge to the time of their delivery.

6.2.

The Freight Forwarder shall be liable for loss of or damage to the goods as well as for delay in delivery if the occurrence, which caused the loss, damage or delay in delivery took place while the goods were in his charge as defined in Clause 2.1.a, unless the Freight Forwarder proves that no fault or neglect of his own, his servants or agents or any other person referred to in Clause 2.2. has caused or contributed to such loss, damage or delay. However, the Freight Forwarder shall only be liable for loss following from delay in delivery if the consignor has made a declaration of interest in

timely delivery which has been accepted by the Freight Forwarder and stated in this FBL.

6.3.

Arrival times are not guaranteed by the Freight Forwarder, however, delay in delivery occurs when the goods have not been delivered within the time expressly agreed upon or, in the absence of such agreement, within the time which would be reasonable to require of a diligent Freight Forwarder, having regard to the circumstances of the case.

6.4.

If the goods have not been delivered within ninety consecutive days following such date of delivery as determined in Clause 6.3, the claimant may in the absence of evidence to the contrary, treat the goods as lost.

6.5.

When the freight forwarder establishes that, in the circumstances of the case, the loss or damage could be attributed to one or more causes or events, specified in a-e of the present clause, it shall be presumed that it was so caused, always provided, however, that the claimant shall be entitled to prove that the loss or damage was not, in fact, caused wholly or partly by one or more of such causes or events:

- a) an act or omission of the Merchant or person other than the Freight Forwarder acting on behalf of the Merchant or from whom the Freight Forwarder took the goods in charge;
- b) insufficiency or defective condition of the packaging or marks and/or numbers;
- c) handling, loading, stowage or unloading of the goods by the Merchant or any person acting on behalf of the Merchant;
- d) inherent vice of the goods;
- e) strike, lockout, stoppage or restraint of labour.

6.6.

Defences for carriage by sea or inland waterways

Notwithstanding Clauses 6.2., 6.3. and 6.4. the Freight Forwarder shall not be liable for loss, damage or delay in delivery with respect to goods carried by sea or inland waterways when such loss, damage or delay during such carriage has been caused by :

- a) act, neglect, or default of the master, mariner, pilot or the servants of the carrier in the navigation or in the management of the ship,
- b) fire, unless caused by the actual fault or privity of the carrier, however, always provided that whenever loss or damage has resulted from unseaworthiness of the ship, the Freight Forwarder can prove that due diligence has been exercised to make the ship seaworthy at the commencement of the voyage.

7. Paramount Clauses

7.1.

These conditions shall only take effect to the extent that they are not contrary to the mandatory provisions of International Conventions or national law applicable to the contract evidenced by this FBL.

7.2.

The Hague Rules contained in the International Convention for the unification of certain rules relating to Bill of Lading, dated Brussels 25th August 1924, or in those countries where there are already in force the Hague-Visby Rules contained in the Protocol of Brussels, dated 23rd February 1968, as enacted in the Country of Shipment, shall apply to all carriage of goods by sea and also to the carriage of goods by inland waterways, and such provisions shall apply to all goods whether carried on deck or under deck.

7.3.

The Carriage of Goods by Sea Act of the United States of America (COGSA) shall apply to the carriage of goods by sea, whether on deck or under deck, if compulsorily applicable to this FBL or would be applicable but for the goods being carried on deck in accordance with a statement on this FBL.

8. Limitation of Freight Forwarder's Liability

8.1.

Assessment of compensation for loss of or damage to the goods shall be made by reference to the value of such goods at the place and time they are delivered to the consignee or at the place and time when, in accordance with this FBL, they should have been so delivered.

8.2.

The value of the goods shall be determined according to the current commodity exchange price or, if there is no such price, according to the current market price or, if there are no such prices, by reference to the normal value of goods of the same name and quality.

8.3.

Subject to the provisions of subclauses 8.4. to 8.9. Inclusive, the Freight Forwarder shall in no event be or become liable for any loss of or damage to the goods in an amount exceeding the equivalent of 666.67 SDR per package or unit or 2 SDR per kilogram of gross weight of the goods lost or damaged, whichever is the higher, unless the nature and value of the goods shall have been declared by the Consigner and accepted by the Freight Forwarder before the goods have been taken in his charge, or the ad valorem freight rate paid, and such value is stated in the FBL by him, then

such declared value shall be the limit.

8.4.

Where a container, pallet or similar article of transport is loaded with more than one package or unit, the packages or other shipping units enumerated in this FBL as packed in such article of transport are deemed packages or shipping units, Except as aforesaid, such article of transport shall be considered the package or unit.

8.5.

Notwithstanding the above-mentioned provisions, if the multimodal transport does not, according to the contract, include carriage of goods by sea or by inland waterways, the liability of the Freight Forwarder shall be limited to an amount not exceeding 8.33 SDR per kilogram of gross weight of the goods lost or damaged.

8.6.

- a) When the loss of or damage to the goods occurred during one particular stage of the multimodal transport, in respect of which an applicable international convention or mandatory national law would have provided another limit of liability if a separate contract of carriage had been made for that particular stage of transport, then the limit of the Freight Forwarder's liability for such loss or damage shall be determined by reference to the provisions of such convention or mandatory national law.
- b) Unless the nature and value of the goods shall have been declared by the Merchant and inserted in this FBL, and the ad valorem freight rate paid, the liability of the Freight Forwarder under COGSA, where applicable, shall not exceed US\$500 per package or , in the case of goods not shipped in packages, per customary freight unit.

8.7.

If the Freight Forwarder is liable in respect of loss following from delay in delivery, or consequential loss or damage other than loss of or damage to the goods, the liability of the Freight Forwarder shall be limited to an amount not exceeding the equivalent of twice the freight under the multimodal contract for the multimodal transport under this FBL.

8.8.

The aggregate liability of Freight Forwarder shall not exceed the limits of liability for total loss of the goods.

8.9.

The Freight Forwarder is not entitled to the benefit of the limitation of liability if it is proved that the loss, damage or delay in delivery resulted from a personal act or omission of the Freight Forwarder done with the intent to cause such loss, damage or delay, or recklessly and with knowledge that such loss, damage or delay would

probably result.

9. Applicability to actions in tort

These conditions apply to all claims against the Freight Forwarder relating to the performance of the contract evidenced by this FBL, whether the claim be founded in contract or in tort.

10. Liability of servants and other persons

10.1

These conditions apply whenever claims relating to the performance of the contract evidenced by this FBL are made against any servant, agent or other person (including any independent contractor) whose services have been used in order to perform the contract, whether such claims are founded in contract or in tort, and the aggregate liability of the Freight Forwarder and of such servants, agents or other persons shall not exceed the limits in clause 8.

10.2

In entering into this contract as evidenced by this FBL, the Freight Forwarder, to the extent of these provisions, does not only act on his own behalf, but also as agent or trustee for such persons, and such persons shall to this extent be or be deemed to be parties to this contract.

10.3

However, if it is proved that the loss of or such loss or damage to the goods resulted from a personal act or omission of such a person referred to in Clause 10.1, done with intent to cause damage, or recklessly and with knowledge that damage would probably result, such person shall not be entitled to benefit of limitation of liability provided for in Clause 8.

10.4

The aggregate of the amounts recoverable from the Freight Forwarder and the persons referred to in Clauses 2.2. and 10.1. shall not exceed the limits provided for in these conditions.

11. Method and Route of Transportation

Without notice to the Merchant, the Freight Forwarder has the liberty to carry the goods on or under deck and to choose or substitute the means, route and procedure to be followed in the handling, stowage, storage and transportation of the goods.

12. Delivery

12.1.

Goods shall be deemed to be delivered when they have been handed over or placed at the disposal of the Consignee or his agent in accordance with this FBL, or when the goods have been handed over to any authority or other party to whom, pursuant to the law or regulation applicable at the place of delivery, the goods must be handed over, or such other place at which the Freight Forwarder is entitled to call upon the Merchant to take delivery.

12.2

The Freight Forwarder shall also be entitled to store the goods at the sole risk of the Merchant, and the Freight Forwarder's liability shall cease, and the cost of such storage shall be paid, upon demand, by the merchant to the Freight Forwarder.

12.3.

If at any time the carriage under the FBL is or is likely to be affected by any hindrance or risk of any kind (including the condition of the goods) not arising from any fault or neglect of the Freight Forwarder or a person referred to in Clause 2.2. and which cannot be avoided by the exercise of reasonable endeavours the Freight Forwarder may:

abandon the carriage of the goods under this FBL and, where reasonably possible, place the goods or any part of them at the Merchant's disposal at any place which the Freight Forwarder may deem safe and convenient, whereupon delivery shall be deemed to have been made, and the responsibility of the freight forwarder in respect of such good shall cease.

In any event, the Freight Forwarder shall be entitled to full freight under this FBL and the Merchant shall pay any additional costs resulting from the above mentioned circumstances.

13. Freight and Charges

13.1.

Freight shall be paid in cash, without any reduction or deferment on account of any claim, counterclaim or set-off, whether prepaid or payable at destination.

Freight shall be considered as earned by the Freight Forwarder at the moment when the goods have been taken in his charge, and not to be returned in any event.

13.2

Freight and all other amount mentioned in this FBL are to be paid in the currency named in this FBL or, at the Freight Forwarder's option, in the currency of the country of dispatch or destination at the highest rate of exchange for bankers sight bills current for prepaid freight on the day of dispatch and for freight payable at destination on the day when the Merchant is notified on arrival of the goods there or on the date of withdrawal of the delivery order, whichever rate is the higher, or at the option of the

Freight Forwarder on the date of this FBL.

13.3

All dues , taxes and charges or other expenses in connection with the goods shall be paid by the Merchant.

Where equipment is supplied by the Freight Forwarder, the Merchant shall pay all demurrage and charges which are not due to a fault or neglect of the Freight Forwarder.

13.4.

The Merchant shall reimburse the Freight Forwarder in proportion to the amount of freight for any costs for deviation or delay or any other increase of costs of whatever nature caused by war, warlike operations, epidemics, strikers, government directions or force majeure.

13.5

The Merchant warrants the correctness of the declaration of contents, insurance, weight, measurements or value of the goods but the Freight Forwarder has the liberty to have the contents inspected and the weight, measurements or value verified. If on such inspection it is found that the declaration is not correct it is agreed that a sum equal either to five times the difference between the correct figure and the freight charged, or to double the correct freight less the freight charged, whichever sum is the smaller, shall be payable as liquidated damages to the Freight Forwarder for his inspection costs and losses of freight on other goods notwithstanding any other sum having been stated on this FBL as freight payable.

13.6.

Despite the acceptance by the Freight Forwarder of instructions to collect freight, charges or other expenses from any other person in respect of the transport under this FBL, the Merchant shall remain responsible for such monies on receipt of evidence on demand and the absence of payment for whatever reason.

14.Lien

The Freight Forwarder shall have a lien on the goods and any documents relating thereto for any amount due at any time to the Freight Forwarder from the Merchant including storage fees and the cost of recovering same, and may enforce such lien in any reasonable manner which he may think fit.

15.General Average

The Merchant shall indemnify the Freight Forwarder in respect of any claims of a General Average nature which may be made on him and shall provide such security as may be required by the Freight Forwarder in this connection.

16. Notice

16.1.

Unless notice of loss of or damage to the goods, specifying the general nature of such loss or damage, is given in writing by the consignee to the Freight Forwarder when the goods are delivered to the consignee in accordance with clause 12, such handing over is prima facie evidence of the delivery by the Freight Forwarder of the goods as described in this FBL.

16.2.

Where the loss or damage is not apparent, the same prima facie effect shall apply if notice in writing is not given within 6 consecutive days after the day when the goods were delivered to the consignee in accordance with clause 12.

17. Time bar

The Freight Forwarder shall, unless otherwise expressly agreed, be discharged of all liability under these conditions unless suit is brought within 9 months after the delivery of the goods, or the date when the goods should have been delivered, or the date when, in accordance with clause 6.4., failure to deliver the goods would give the consignee the right to treat the goods as lost.

18. Partial Invalidation

If any clause or a part thereof is held to be invalid, the validity of this FBL and the remaining clauses or a part thereof shall not be affected.

19. Jurisdiction and applicable law

Actions against the Freight Forwarder may be instituted only in the place where the Freight Forwarder has his place of business as stated on the reverse of this FBL and shall be decided according to the law of the country in which that place of business is situated.

TAB 3

>>> advised if you have any questions please let me know.
>>>
>>> Best regards
>>>
>>> Mario
>>> Worldport Logistics
>>> E-mail: mario@worldportlgs.com
>>>
>>>
>>>
>>>
>
>
>
>
>

----- Message from "Mario Ruiz" <mario@worldportlgs.com> on Tue, 22 Aug 2006 17:27:18 -0400 -----
<Betty.Sun" <betty.sun@bjs.pandalog.com" :To
<betty@jaguarbj.com> :cc
Fw: Extremely Urgent!!! Beijing Jaguar suspended all our Subject
!!!BL :

Betty:

Please see the attached mentioned e-mail from my client which is most embarrassing for both our companies. I can not believe that this has happened. I do not understand why you did not mentioned this to me first instead of the shipper getting and "official notification from Jaguar"

As I mentioned I on my last payment I will get up to date by the end of the month. I will send another \$9230.00 by friday which will cover inv:BO6050618, BO6050145, BO6052098

I will keep paying you also the week after. I can not really understand why you are delaying house bills to them. I can understand the Master that you are holding but not the house.

Please!!!!!!!!!!!!!!!!!!!!!! release the house bill of lading to the shipper and Hold the master if you need I will not let you down.

I will await your news please call me if you need.

Best regards
Mario

----- Original Message -----

From: Patty De Avila

To: 'Mario Ruiz'

Cc: 'Geraldine Torres'

Sent: Tuesday, August 22, 2006 9:54 AM

Subject: FW: Extremely Urgent!!! Beijing Jaguar suspended all our BL!!!

I NEED AN EXPLANATION AND A CALL TO ME ASAP. THIS IS NOT GOOD, I AM NOT GOING TO LOOSE MY JOB BECAUSE THIS PROBLEM.

THANKS,
PATTY

From: lunar [mailto:lunar1106@163.com]

Sent: Tuesday, August 22, 2006 4:38 AM

To: 'Patty De Avila'

Cc: 'Lois'; Angela Espitia; 'Caroline'; 'Caya Grajales'; Dean Triandafellos; 'Jacob Tepper'; Luciana De Leon; Michael Reid; 'Sebastian Lubnicki'; 'STEVEN MENDAL'

Subject: Extremely Urgent!!! Beijing Jaguar suspended all our BL!!!

Hi Patty,

There is an emergency that we will need your immediate attention and help to solve this problem.

We received an official call from Beijing Jaguar today that confirmed all bill of ladings on 8/19 will not be released to us. The reason is they have some internal disputes and disagreements with Mario of the U.S., so they have to suspend all our bill of ladings.

To give you an idea, please find the attached chart of the shipments that we booked with Beijing Jaguar:

- All shipment highlighted in yellow were on 8/19. There were 11 containers. The goods are on ocean, but we can't get the BL released.
- All shipment highlighted in green are on 8/26. There are 9 containers. Shall we keep using Beijing Jaguar if they won't release the BL to us???
- All shipment highlighted in blue are on 9/2. There are 5 containers. Shall we keep using Beijing Jaguar if they won't release the BL to us???

Patty, I can't explain how important the issue is. It happens to be our most critical peak season of shipment of the year. We have to make sure all our shipments leave on time and we can get the BL with no delay. We don't care what are the disputes between Mario and Beijing Jaguar, but we should not be the sufferer. Now we are very concerned about the shipment leave on 8/26 & 9/2, because if they can't settle down their internal disagreements, and somehow to delay neither our shipments or the BL, there will be a disaster for both of us and Everfun won't be responsible for this problem.

Please make sure you will work on this and come back to us tomorrow without fail. We will wait for your confirmation to decide which way to go.

Thank you for your attention!

Bst Rgds,
Lunar

TAB 4

From: lvnan
To: mario@worldportlgs.com ; m.ruiz@rdmsolution.com

Cc: Betty.Sun ; overseas6@pandaglb.com
Sent: Tuesday, March 04, 2008 8:13 PM
Subject: Re: Dog Chew business

Dear Mario,

Pls check our cost as follow,

From Keelung / Kaohsiung to New York/Savannah: \$2750/3350/3570 PER 20'/40'/40'HQ

From Taichung + 100 / cntr

Carrier: ZIM

Closing: every Fri.

T/time: 26 days

Workable date: untill end of Mar.

Commodity:

Fabrics, Glassware, Plumbing supply, Computer parts,
Leather Goods, K.D. Furniture, Machinery, Bolts & Nuts,
Plastic Goods, Auto parts, Kitchenware, Steel products

Cargo weight limit: 18000 KGS per 20'

If over 18000 kgs, shipper has to pay over weight charge USD500 at Taiwan.

If you have other commodities, please check with us before you offer to your client.

Most of item is accept by ZIM line.

Also, rates listed above are subject to local surcharge both at origin & destination.

Anyhow, should you have any questions, please feel free to advise us.

B.rgds
Ivan