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ANNEX 10: CONDITIONS OF TRANSPORT

To the Agreement between and among the Governments of the Kingdom of Cambodia, the People's Republic of China, the Lao People's Democratic Republic, the Union of Myanmar, the Kingdom of Thailand, and the Socialist Republic of Viet Nam for Facilitation of Cross-Border Transport of Goods and People (hereinafter referred to as "the Annex")

The Governments of the Kingdom of Cambodia, the People's Republic of China, the Lao People's Democratic Republic, the Union of Myanmar, the Kingdom of Thailand, and the Socialist Republic of Viet Nam (hereinafter referred to as "the Contracting Parties"),

Referring to the Agreement between and among the Governments of the Lao People's Democratic Republic, the Kingdom of Thailand, and the Socialist Republic of Viet Nam for the Facilitation of Cross-Border Transport of Goods and People, originally signed at Vientiane on 26 November 1999, amended at Yangon on 29 November 2001, acceded to by the Kingdom of Cambodia at Yangon on 29 November 2001, acceded to by the People's Republic of China at Phnom Penh on 3 November 2002, and acceded to by the Union of Myanmar at Dali City on 19 September 2003, and amended at Phnom Penh on 30 April 2004 (hereinafter referred to as "the Agreement"),

Referring to Articles 3(b) and (n) of the Agreement to the effect that Annexes and Protocols contain technical details or time- and/or site-specific variable elements and that they form an integral part of the Agreement and are equally binding,

Referring to Article 36 of the Agreement, as amended, per which the Agreement may be signed and ratified or accepted and enter into force separately from the Annexes and Protocols,

Referring to the Ninth GMS Ministerial Conference held in Manila in January 2000, the Seventh Meeting of the Subregional Transport Forum held in Ho Chi Minh City in August 2002, and the 11th GMS Ministerial Conference held in Phnom Penh in September 2002, where the Governments agreed to a work program to finalize the Agreement and its Annexes and Protocols by 2005, and

Referring to Article 24(a) of the Agreement, calling for this Annex to provide technical details,

HAVE AGREED AS FOLLOWS:

Part I: General Provisions

Article 1: Definitions

For the purpose of this Annex, the following meanings shall apply to the underlined terms:

(a) Carrier: a person who undertakes to carry goods for reward.

(b) Consignee: the person to whom the goods are to be delivered.

(c) Consignor: the person who concludes the contract of carriage with the carrier and hands over the goods to the carrier.

(d) Consignment Note: the transport document for the purpose of recording the contract of carriage, its conditions, the taking in charge and delivery of the goods.

(e) Delay: delay in delivery when the goods have not been delivered within the agreed period or in the absence of such an agreement, within the normal period of time required for a due diligent carrier in the same circumstances.

(f) Force Majeure: circumstances resulting in loss, damage, or delay that the carrier could not foresee and avoid, and the consequences of which he/she was unable to prevent or control.

(g) In-transit: en route, i.e., in the course of the transport operation.

(h) Right of Disposal: the power to decide the destiny of the goods.

(i) Special Drawing Right (SDR): a unit of account defined by the International Monetary Fund (IMF) - conversion of the sums into national currencies shall be calculated in accordance with the method of valuation applied by the International Monetary Fund.

(j) Remarks: statements on the condition of the goods upon the taking in charge or delivery of the goods.

Article 2: Scope of Application

(a) This Annex shall apply to the contract of carriage of goods for reward by road in a motor vehicle when the place of handing over the goods to the carrier and the place of delivery to the consignee are situated in the territories of different Contracting Parties.

(b) This Annex shall not apply to carriage performed under the terms of any international postal conventions.

Part II: Pricing

Article 3: Pricing

(a) The transport price will be freely determined by market forces, but subject to antitrust restrictions, so as to avoid excessively high or low pricing.

(b) Contracting Parties and transport operators shall refrain from any measures, agreements, or practices tending to distort free and fair competition, such as cartels, abuse of dominant position, dumping, and state subsidization. They shall be denied any effect and be null and void. Contracting Parties shall ensure that their respective transport operators conform to this percept.

Part III: Carrier Liability Regime

Article 4: The Contract of Carriage

(a) Consignment Note

(i) The contract of carriage shall be recorded via the issuance of a consignment note in three original copies signed by the consignor and the carrier. The signatures may be in the form of handwriting, print, perforated, stamped, symbols, or in any other mechanical or electronic forms, not inconsistent with the laws of the Contracting Party where the consignment note is issued. The first copy shall be handed to the consignor, the second copy shall accompany the goods, and the third copy shall be retained by the carrier.

(ii) The consignment note shall conform to the model in the attachment, and contain the following particulars:

- the date of the consignment note and the place at which it is made out;
- the name and address of the consignor;
- the name and address of the carrier;
- the place and the date of taking in charge of the goods and the place designated for delivery;
- the name and address of the consignee;
- the description in common use of the nature of the goods and the method of packing, and, in the case of dangerous goods, their description in accordance with Annex 1 to the Agreement;
- the number of packages and their special marks and numbers;
- the gross weight of the goods or their quantity otherwise expressed;
- charges relating to the carriage (carriage charges, supplementary charges, and other charges incurred from the making of the contract to the time of delivery);
- value of the goods for customs purposes;
- the requisite instructions for Customs and other formalities; and
- a statement that the carriage is subject, notwithstanding any clause to the contrary, to the provisions of this Annex.

(iii) Where applicable, the consignment note shall also contain the following particulars:

- a statement that trans-shipment is not allowed;
- the charges which the consignor undertakes to pay;
- the amount of "cash on delivery" charges;
- a declaration of the value of the goods and the amount representing special interest in delivery;
- carrier and consignee remarks;
- the consignor's instructions to the carrier regarding insurance of the goods;
- the agreed time limit within which the carriage is to be carried out; and
- a list of the documents handed to the carrier.

(iv) The parties may enter in the consignment note any other particulars that they may deem useful.

(v) The absence, irregularity or loss of the consignment note shall not affect the existence or the validity of the contract of carriage, which shall remain subject to the provisions of this Annex.

(b) Remarks Upon Taking the Goods In Charge

(i) Upon taking the goods in charge, the carrier shall check the quantity (number and weight) and apparent quality (condition) of the goods and their packaging and make appropriate remarks in the consignment note. In the absence of remarks by the carrier, the cargo is presumed to be complete and in good condition.

(ii) Where the carrier has no reasonable means of checking the accuracy of the statement made in the consignment note with respect to quantity, quality, and packaging of the goods, he/she shall enter his/her remarks in the consignment note together with the grounds on which they are based. He/she shall likewise specify the grounds for any remarks, which he/she makes with regard to the apparent condition of the goods and their packaging; such remarks shall not bind the consignor unless he/she has expressly agreed to be bound by them in the consignment note.

(c) Right of Disposal

Unless otherwise agreed in the consignment note:

(i) The consignor has the right to dispose of the goods, in particular to stop the goods in-transit, to order their return to the place of departure or to redirect them to another destination/consignee.

(ii) The consignor's right to dispose of the goods shall cease and be transferred to the consignee:
- when the goods are delivered; or
- when the goods arrive at the place designated for delivery and the consignee required the delivery; or
- when the second copy of the consignment note was received by the consignee at his/her request.

The carrier shall be compensated for any additional expenses arising from exercising the right of disposal in-transit.

(d) Right of Action

Both the consignor and the consignee shall separately or simultaneously have the right to sue the carrier for compensation for loss of, damage to, or delay in delivery of the goods, but the carrier shall owe compensation only once.

Article 5: Principles of Carrier Liability

(a) Mandatory Law

Any clause in the carriage contract, directly or indirectly derogating from the provisions of this Annex, shall be null and void. The nullity of such a stipulation shall however not affect the validity of the other provisions of the contract.

(b) In Contract and In Tort

The present liability regime will govern any claim arising out of the performance of the carriage contract under this Annex, however founded, whether in contract or extra-contractually.

(c) Vicarious Liability for Servants, Agents, and Subcontractors

In connection with his/her tasks, the carrier shall be responsible for acts and/or omissions of his/her servants, agents, and subcontractors, who will be entitled to avail themselves of the same defenses as the carrier under this Annex.

Article 6: Subject of Carrier Liability

(a) General

The carrier shall be liable for the total, or partial loss of, or damage to the goods as well as for the delay in delivery that occurred in the period between the time that the carrier takes the goods in charge and the time of delivery.

(b) Constructive Loss

(i) If the goods have not been delivered within 30 days from the expiry of the agreed delivery time or in the absence of such an agreement, within 60 days from the time the carrier takes the goods in charge, the goods will be deemed lost. The consignor/consignee is entitled to claim compensation for loss.

(ii) Upon later recovery of the goods, the carrier shall notify immediately the consignor/consignee, who shall be entitled to opt for delivery of the goods against refund of the compensation already received, but without prejudice to any claim for compensation for partial loss, damage or delay.

(iii) In the absence of the consignor/consignee's request for delivery of the recovered goods within 30 days from the receipt of notification by the consignor/consignee from the carrier, the carrier shall be entitled to deal with the goods at his/her discretion, subject to the law of the place where the goods are situated.

Article 7: Measure of Compensation and Limitation of Carrier Liability

(a) Loss and Damage

(i) The compensation for total or partial loss of or damage to the goods shall be calculated by reference to the commodity exchange price or current market price or else to the normal value of the goods at the place and time they were accepted for carriage.

(ii) Compensation due by the carrier shall not exceed 8.33 SDR per kilogram gross weight of the goods short delivered or of items damaged.

(iii) In addition, the carrier shall refund in full in case of total loss and in proportion to the loss sustained in case of partial loss, the carriage charges, customs duties, taxes, and other charges incurred in respect of the carriage of goods.

(iv) He/she will owe no additional damages.

(b) Delay

Compensation due by the carrier for damage resulting from delay, other than physical damage affecting the value of the goods, shall be limited to an amount not exceeding the transport price.

(c) Declaration of Value and/or Special Interest in Delivery

Via the entry of the following declarations by the consignor in the consignment note prior to the carriage and against payment of a surcharge, higher compensation than mentioned above shall be due by the carrier:

(i) declaration of the value of the goods:

- In this case the limit in Article 7(a) (ii) shall be substituted by the amount of that value; and/or

(ii) declaration of a special interest in delivery:

- In this case compensation of additional damages shall be due by the carrier, independently from the compensation according to Article 7(a) and (b).

Article 8: Exoneration of Carrier Liability

(a) The carrier shall be relieved of liability if he/she proves that the loss, damage, or delay in delivery was caused by:

(i) force majeure;

(ii) inherent defect of the goods;

(iii) wrongful act or neglect of the consignor/consignee; or

(iv) the instructions of the claimant given otherwise than as the result of a wrongful act or neglect on the part of the carrier.

(b) The defective condition of the vehicle used for the performance of the carriage shall not relieve the carrier of his/her liability.

(c) Subject to counterproof by the consignor/consignee, the carrier shall be relieved of liability if he/she establishes that the loss, damage, or delay in delivery was attributable to:

(i) use of open unsheeted vehicles, when their use has been expressly agreed and specified in the consignment note, unless there has been an abnormal shortage or a loss of any package;

(ii) the lack of, or defective condition of packing in the case of goods which, by their nature, are liable to wastage or to be damaged when not packed or when not properly packed;

(iii) handling, loading, stowage, or unloading of the goods by the consignor, the consignee or person acting on behalf of the consignor or the consignee;

(iv) the nature of certain kinds of goods which particularly exposes them to total, or partial loss, or to damage, especially through breakage, rust, decay, desiccation, leakage, normal wastage, or the action of moth or vermin; however, if the carriage is performed in vehicles specially equipped to protect the goods from the effect of heat, cold, variations in temperature, or the humidity of the air, the carrier must prove that all steps incumbent on him/her in the circumstances with respect to the choice, maintenance, and use of such equipment were taken and that he/she complied with any special instructions issued to him/her;

(v) insufficiency or inadequacy of marks or numbers on the packages; or

(vi) the carriage of livestock, provided the carrier proves that all steps normally incumbent on him/her in the circumstances were taken and that he/she complied with any special instruction issued to him/her.

Article 9: Lifting of the Exoneration or Limitation of Carrier Liability

The carrier shall not be entitled to avail himself/herself of the exoneration or limitation of liability if the loss, damage, or delay was caused by his/her, or his/her servants', agents', or subcontractors' willful misconduct or gross negligence.

Article 10: Claims and Actions

(a) Remarks on Delivery

(i) Upon delivery of the goods, the consignee shall check the quantity (number and weight) and apparent quality (condition) of the goods and their packaging and if shortage or damage is found, make immediately appropriate remarks in writing.

(ii) For loss or damage that is not apparent, the period for making remarks in writing is extended to seven working days from the date of receipt.

(iii) In the absence of such remarks by the consignee, the quantity and condition of the goods are presumed to be as described in the consignment note.

(b) Time Bar

All claims for compensation for loss of, damage to, and delay of the goods against the carrier shall be time barred unless an action was filed with the court or arbitration initiated within one year:

(i) in case of partial loss, damage, or delay:
- after the delivery of the goods; and

(ii) in case of total loss:
- after 30 days from the expiry of the agreed delivery period or if no such period was agreed, after 60 days from the receipt of the goods by the carrier.

However, in case of the carrier's or his/her servants', agents', or subcontractors' willful misconduct, the time bar shall be three years.

(c) Jurisdiction

(iii) An action for compensation based on this Annex may be brought in the courts of the Contracting Party:

- where the carriage originated from or was destined to;
- where the loss or damage occurred, if localized;
- where the principal place of business of the carrier is located; or
- where the habitual residence of the claimant is located.

(iv) The claim for compensation may also be settled by means of arbitration based on an agreement entered into between parties concerned after the claim has arisen.

Part IV: Final Provisions

Article 11: Amendment

Any Contracting Party may propose amendments to the Annex via the Joint Committee. Such amendments shall be subject to the unanimous consent of the Contracting Parties.

Article 12: Ratification or Acceptance

The Annex is subject to ratification or acceptance of the Governments of the Contracting Parties. The same applies to an amendment to the Annex, if any.

Article 13: Entry into Force

The Annex will enter into force on the day that at least two Contracting Parties have ratified or accepted it, and will become effective only among the Contracting Parties that have ratified or accepted it. The same applies to an amendment to the Annex, if any.

Article 14: Conforming National Law

Where necessary, the Contracting Parties undertake to conform their relevant national legislation with the contents of the Annex.

Article 15: Reservations

No reservation to the Annex shall be permitted.

Article 16: Suspension of the Annex

Each Contracting Party may temporarily suspend wholly or partly the application of the Annex with immediate effect in the case of emergencies affecting its national safety. The Contracting Party will inform the other Contracting Parties as soon as possible of such suspension, which will end as soon as the situation returns to normal.

Article 17: Relationship with the Agreement

As a measure to implement the principles laid down in the Agreement, the Annex cannot depart from or be contrary to these principles. In case of incompatibility between the Annex and the Agreement, the latter shall prevail. In case of incompatibility between the Annex and another annex or protocol, such incompatibility shall be interpreted in light of the Agreement.

Article 18: Relationship of the Attachment to the Annex

The attachment shall form an integral part of the Annex and shall be equally binding.

Article 19: Dispute Settlement

Any dispute between or among two or more Contracting Parties on the interpretation or application of the Annex shall be settled directly or by amicable negotiation in the Joint Committee.

Article 20: Denunciation

Once entered into force, the Annex cannot be denounced separately from the Agreement.

Attachment: Model Consignment Note

Attachment to Annex 10: Model Consignment Note

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Copy nr. [1 (consignor)] [2 (consignee] [3 (carrier)]

1 Consignor (name, address and contact data: phone, fax, email)	International Consignment Note (This carriage is subject notwithstanding any clause to the contrary to Annex 10 to the Agreement between Cambodia, PRC, Lao PDR, Myanmar, Thailand, and Viet Nam for the Facilitation of Cross-Border Transport of Goods and People)
2 Consignee (name, address and contact data: phone, fax, email)	16 Contracting Carrier (name, address and contact data: phone, fax, email)
3 Place of delivery of the goods	17 Subcontracting actual carrier (name, address and contact data: phone, fax, email)
4 Place and date of taking in charge of the goods	18 Carrier's remarks
5 Documents attached	

6 Marks and numbers	7 Number of Packages	8 Method of packing	9 (Dangerous) nature of the goods	10 Other particulars: - Customs value - Other	11Gross weight in kg	12 Volume in m³
ADR Class	ADR Number	ADR Letter				

13 Consignor's instructions: - for Customs formalities: - for other formalities: - transhipment is/is not allowed - other:	19 Special Agreements : - cargo insurance to be arranged by the carrier : - period/latest day for performance of carriage : - declared value and/or special intrest in delivery of goods :						
	20 To be paid by:	Consignor		Currency		Consignee	
	Carriage charges: Reductions:						
	Balance: Supplemental charges Other charges						
	TOTAL:						
14 Instructions on payment of carriage charges: 0 prepaid 0 collect							
21 Done at on 20	15 Cash on Delivery :						

22 Consignor's signature/stamp	23 Carrier's signature/stamp	24 Goods received : - at (place) - on (date) Consignee's remarks: Consignee's signature/stamp:

In witness whereof, the undersigned, being duly authorized, have signed this Annex.

Done at Kunming on 5 July 2005 in six originals in the English language.

Signed:

For the Royal Government of Cambodia

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His Excellency Sun Chanthol
Minister of Public Works and Transport

For the Government of the People's Republic of China

.....

His Excellency Zhang Chunxian
Minister of Communications

For the Government of the Lao People's Democratic Republic

.....

His Excellency Somphong Mongkhonvilay
Minister to Prime Minister's Office

For the Government of the Union of Myanmar

.....

His Excellency Soe Tha
Minister of National Planning and Economic Development

For the Government of the Kingdom of Thailand

.....

His Excellency Suriya Jungrungreangkit
Minister of Transport

For the Government of the Socialist Republic of Viet Nam

.....

His Excellency Pham The Minh
Vice Minister of Transport