

# CHAPTER 1 - GENERAL PROVISION AND DEFINITION

## 1. Definition

The following words both on the face and back of this Bill of Lading have the meaning hereby assigned:

- (1) "Carrier" means a party shown at the top of the face of this Bill of Lading including the servants, agents and the Master, and the vessel and/or her owner.
- (2) "Merchant" includes the shipper, consignee, receiver of the Goods, any person owing or entitled to the possession of the Goods or this Bill of Lading and anyone acting on behalf of any such person.
- (3) "Sub-Contractor" includes owners and operators of vessels and space providers on vessels (other than the Carrier), stevedores, terminal and groupage operators, and independent contractor directly or indirectly employed by the Carrier in performance of the Carriage, their respective servants and agents, and anyone assisting the performance of the Carriage
- (4) "Goods" means the whole or any part of the cargo received from the shipper and includes any equipment or container or case not supplied by or on behalf of the Carrier.
- (5) "Carriage" means the whole or any part of the services of the Goods undertaken by the Carrier in respect of the Goods under this Bill of Lading.

## 2. Terms and Conditions of the Carriage Contract

- (1) This Bill of Lading shall constitute the carriage contract between the Merchant (defined by Clause 1 above) and the Carrier.
- (2) Notwithstanding the foregoing, in case there is underlying carriage contract between the Carrier and the Merchant, this Bill of Lading is merely cargo receipt of the Carrier at the load port and the terms and conditions of such underlying carriage contract shall govern the rights, obligations and liabilities of the Carrier and the Merchant in accordance with Clause 7 (Governing Law and Jurisdiction).

## 3. Carrier's Tariff

The terms of the Carrier's applicable Tariff are deemed to be incorporated herein. Copies of the relevant provisions of the applicable Tariff are obtainable from the applicable Tariff, the terms and conditions of this Bill of Lading shall prevail.

#### **4. Identity of Carrier**

- (1) If the vessel is not owned by, or chartered by demise to the Carrier (as maybe the case notwithstanding anything that appears to the contrary) this Bill of Lading shall take effect only as a contract with the owner or demise charterer, as the case may be, as principal, made through the agency of the Carrier which acts as agent only and shall be under no personal liability whatsoever in respect thereof.
- (2) If, despite the foregoing, it shall be adjudged that the Carrier, and not the owner or demise charterer is a party to this Bill of Lading and/or a bailee of the Goods, all limitations of and exemptions from liability provided by law or by the terms hereof shall be available to the Carrier.

#### **5. Hague Rules Legislations**

- (1) This Bill of Lading shall have effect subject to the provisions of the International Carriage of Goods by Sea Act, 1957 of Japan, as amended on 3 June, 1992 (hereinafter called the "Act"), unless it is adjudged that any other legislation of a nature similar to the International Convention for the Unification of Certain Rules relating to Bills of Lading signed at Brussels on 25 August, 1924, or the amendments by the Protocol signed at Brussels on 23 February, 1968, or the amendments by the Protocol signed at Brussels on 21 December, 1979, including without limitation, the Carriage of Goods by Sea Act, 1936 of the United States (hereinafter called "US COGSA") (such similar legislation and US COGSA shall hereinafter be called "Hague Rules Legislation"), compulsorily applies to this Bill, in which case it shall have effect subject to the provisions of such Hague Rules Legislation.
- (2) Hague Rules Legislation including US COGSA shall also apply and govern the Carriage before the Goods are loaded on and after they are discharged from the vessel and throughout the entire time the Goods are in custody of the Carrier, its agents, servants, representatives and Sub-Contractors, subject to Clause 9 (Period of Liability of the Carrier).

#### **6. Clause Paramount of US COGSA**

Notwithstanding anything else in this Bill of Lading, this Bill of Lading shall have

effect subject to US COGSA for all the Carriage moving to or from the United States of America (this expression includes its districts, territories and possessions).

## **7. Governing Law and Jurisdiction**

- (1) The contract constituted by this Bill of Lading shall be governed by and construed in accordance with Japanese law, and any action against the Carrier (defined in Clause 1 above) in respect of loss of, damage to the Goods (defined in Clause 1 above) and/or delay of the Carriage (defined in Clause 1 above) shall be exclusively brought before the Tokyo District Court in Japan.
- (2) The above paragraph (1) shall be applicable to action by the Carrier against the Merchant, seeking confirmation of absence of liability in respect of loss of, damage to the Goods and/or delay of the Carriage.
- (3) Any other action by the Carrier against the Merchant to enforce any terms and conditions of this Bill of Lading may be brought before any court of competent jurisdiction at the option of the Carrier.
- (4) In order to comply with the above (1), (2) and (3), the Merchant shall waive right of action in rem against the vessel at any jurisdiction where action in rem is recognized.

## **8. Description on This Bill of Lading**

### **(1) Description of the Goods**

This Bill of Lading shall be *prima facie* evidence of the receipt by the Carrier except as otherwise noted in apparent external good order and condition and of the total number of containers or packages (for the Goods not shipped in or on container(s)) or the Goods (for the Goods in bulk or in liquid) provided that:

- (a) as between the holder of this Bill of Lading in good faith and the Carrier, the description of the Goods on this Bill of Lading shall be conclusive evidence of the apparent external order and condition of the Goods at the time of loading into the vessel, and
- (b) in construing above (a), the holder of this Bill of Lading shall not be deemed to be in good faith if he is either head or branch office of, parent subsidiary or associated company of, or main or sub contractor of, or any of similar entities of the Merchant and has no independent interest in the Goods.

### **(2) Description of "From"**

In case the column of "(From)" on the face hereof are filled up and this Bill of Lading is issued at a place other than the port of loading onto the vessel, any

statement herein as to the shipment of the Goods shall be construed to relate only to the time when and place where the Goods were loaded on board the local vessel.

## **9. Period of Liability of the Carrier**

### **(1) Berth Term/Liner Term**

Unless otherwise agreed between the Carrier and the Merchant, the Carrier shall not be liable in any capacity whatsoever for any loss of and/or damage to the Goods occurring before loading onto the vessel at the port of loading or after discharge from the vessel at the port of discharge, whether awaiting shipment, landed or stored or put into craft, barge, lighter or otherwise belonging to the Carrier or not, or pending transshipment at any stage of the Carriage.

### **(2) FI, FO, FIO Term**

In case loading and/or discharge of the Goods are effected by the Merchant at his expense (in which case, the terms "FI", "FO" or "FIO" are shown in this Bill of Lading as the case may be), the Carrier's responsibility shall commence when loading has been completed and/or cease when discharge has begun respectively, and the Carrier shall be exonerated from any loss of and/or damage to or in connection with the Goods occurring due to the bad loading, stowage and discharge of the Goods effected by the Merchant, irrespective of when such loss of, damage to the Goods or the damages arise during such loading, stowage or discharge of the Goods or carriage at sea, during such loading and/or discharge, even if such loading and/or discharge are done with the assistance and/or advice of the Master/vessel's officers/crew, who in such cases, are deemed to be an agent(s) or employee(s) of the Merchant.

## **10. Title to Sue**

A person entitled to demand the delivery of the Goods (defined by Clause 1 above) at the port of discharge in exchange for surrender of this Bill of Lading and retaining title to sue against the Carrier in respect of loss of and/or damage to the Goods and/or delay of Carriage of the Goods shall be only the holder of this Bill of Lading with a lawful series of endorsement.

## **CHAPTER 2 - LIBERTIES OF THE CARRIER**

## **11 Matters Affecting the Carriage**

- (1) In any situation whatsoever, whether or not existing or anticipated before commencement of or during the Carriage, which, in the judgment of the Carrier,
  - (a) has given or is likely to give rise to danger, injury, loss, delay, risk of capture, seizure or detention, or disadvantage of whatsoever nature to the vessel, the Carrier, the Goods, any person or any property, or
  - (b) has rendered or is likely to render it in any way unsafe, impracticable or unlawful or against the interest of the Carrier or the Merchant to commence or continue the Carriage or to discharge the Goods at the port of discharge by the route or in manner originally intended by the Carrier, the Carrier shall be at liberty to,
    - (a) cancel the contract of the Carriage without compensation before the Goods are loaded on board the vessel, in which case the Carrier shall be entitled to require the Merchant to take delivery of them and upon failure of the Merchant to do so, to warehouse or place them anywhere at the risk and expense of the Merchant, or
    - (b) discharge the Goods or any part thereof at any port or place selected by the Carrier or to carry them back to the port of loading and there discharge them if the Goods have been loaded on board the vessel and the obligations of the Carrier under this Bill of Lading shall cease at the time of the discharge of the Goods.
- (2) If, after any action under the preceding paragraph, the Carrier makes any further arrangements to store and/or tranship and/or forward the Goods, it is agreed that,
  - (a) the Carrier does so as agent only for, and at the sole risk, responsibility and expense of the Merchant without any liability whatsoever in respect of such agency, and
  - (b) the Merchant shall reimburse the Carrier forthwith upon demand all extra freight, charges and expenses incurred thereby
- (3) The situations referred to in the paragraph (1) above shall include, but not be limited to, those caused by the existence or apprehension of,
  - (a) war declared or other disturbances;
  - (b) closure of, obstacle in or danger to any canal;
  - (c) blockade of port or place or interdict or prohibition of or restriction on commerce or trading;
  - (d) quarantine, sanitary or other similar regulation or restrictions;
  - (e) strikes, lockouts or other labor troubles whether partial or general and whether or not involving employees of the Carrier or his Sub-Contractors;
  - (f) congestion of port, wharf, quay or any other place; or

(g) shortage, absence or obstacles of labor or facilities for loading, discharge, delivery or other handling of the Goods; epidemics or diseases; bad weather, shallow water, ice or other obstacles in navigation.

(4) The Carrier shall also have liberty to comply with orders, directions, regulations, recommendations or suggestions as to departure, arrival, route, ports of call, stoppage, loading, discharge, handling, destination, delivery, quarantine or otherwise, howsoever given by any government, public authorities or department thereof or any person acting or purporting to act with authority of such government, public authorities or department thereof or by any committee or person having, under the terms of any insurance on the vessel, the right to give such orders, directions, regulations, recommendations or suggestions.

(5) If by reason of and/or in compliance with any such orders, directions, regulations, recommendations or suggestions anything is done or is not done, the same shall be deemed to be proper performance of the Carriage and shall not be deemed to be breach of or deviation from contract.

## **12 Carriage Affected by Condition of the Goods**

(1) If it appears at any time that, due to the condition of the Goods, the Goods cannot safely or properly be carried further or without including additional expense or taking any measure(s) in relation to the package, container, case or the Goods, the Carrier shall be at liberty to with or without notice to the Merchant and as agent or in his own name, take any measure(s) and/or incur any additional expense to carry or to continue the Carriage thereof, and/or sell or dispose the Goods, and/or abandon the Carriage and/or store them ashore or afloat, under cover or in the open, at any place, whichever the Carrier, in his absolute discretion, considers most appropriate.

(2) Upon such abandonment, storage, sale or disposal of the Goods, the obligations of the Carrier under this Bill of Lading shall cease and the Merchant shall indemnify the Carrier against any additional expense so incurred.

## **13 Methods and Route of the Carriage**

(1) At any time and without notice to the Merchant, the Carrier shall be at liberty to:

- use any means of carriage whatsoever,
- use Sub-Contractor on any terms whatsoever,

- (c) tranship the whole or any part of the Goods, with or without notice, at any port or place for any purpose whatsoever, or to forward the same by any means of transport by water, land or air, whether owned or operated by the Carrier or not. The Carrier's liability shall, in this event, cease when the Goods leave the vessel's tackle.
- (d) proceed by any route in his discretion (whether or not the nearest or most direct or customary or advertised route) and proceed to or stay at any place or port whatsoever, once or more often and in any order,
- (e) load and unload the Goods at any place or port (whether or not 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 acting or purporting to act as or on behalf of such government or authority, or having under the terms of any insurance on any conveyance employed by the Carrier the right to give orders or directions,
- (g) permit the vessel to proceed with or without pilots, to tow or be towed, or to go to repair yards for dry-dock in ballast or loaded condition, shift berths, take in fuel or stores, embark or disembark any person, carry explosives, munitions, warlike stores and hazardous cargo, and save or attempt to save life or property.
- (h) open any container or package at any time and to inspect, reweigh, remeasure, revalue, sort, mend, repair, repack or reconditioning or otherwise protecting or caring for the Goods without notice to the Merchant, and the Carrier shall not be liable for any loss or damage incurred arising therefrom. The Merchant authorizes the Carrier to pay and/or incur all such charges and expenses and to do any matters mentioned above at the expense of and as agent for the Merchant and to engage other persons to regain or seek to regain possession of the Goods and do all things deemed advisable for the benefit of the Goods.
- (i) comply with the custom or practice of any port or place, whether legal, factual or commercial, whether prevailing locally, nationally, or internationally, and whether the Merchant personally knows of such custom or practice, with regard to receiving, loading, stowing, keeping, carrying, discharging, and/or delivering Goods, and in particular, the Carrier shall be entitled to give delivery of the Goods without surrender of an original Bill of Lading in those jurisdictions where such practice is recognized whether by custom or law.

(2) The Merchant acknowledges that the freight paid or to be paid under this

Contract assumes that the vessel will travel through waterways, natural or artificial, including the Panama Canal and the Suez Canal, ("Waterway") where such transit is the shortest and/or most convenient route to the discharge port. The Merchant acknowledges that there is a risk that any such Waterway may be blocked, closed or that the vessel may encounter significant delay (more than 72 hours waiting time) at such Waterway. In such an event or reasonably anticipated event, at the Carrier's discretion,

- (a) the vessel may wait at or off the Waterway, and/or
- (b) the vessel may sail such alternative route as the Carrier deems suitable, and/or
- (c) the Master may discharge the cargo at a close or convenient port with all of the Carrier's obligations under this contract being considered fulfilled.

The Merchant shall be liable to pay the Carrier additional freight as agreed (a) for any waiting time exceeding 48 hours, whether the voyage is eventually resumed or the cargo is lawfully discharged at a close or convenient port and (b) for the consequent increase in time for sailing an alternative route. The additional freight shall be determined based upon the cost of the Carrier such as hire to be spent and bunker to be consumed for the waiting time exceeding 48 hours in case of the above (a) and the cost of the Carrier such as hire and bunker for the prolonged voyage time at an alternative route in case of the above (b).

If the amount of additional freight is not agreed to between the Carrier and the Merchant within reasonable time, such an amount shall be exclusively determined by the Japan Shipping Exchange, Inc. in accordance with its rules concerning the issuance of appraisal and certificate. The determination of the amount of the additional freight by the Japan Shipping Exchange, Inc. shall be final and conclusive and the cost for such appraisal shall be borne by a losing party. The Carrier shall have a lien on the cargo for any freight and discharging costs payable by the Merchant according to this Clause

- (3) Anything done in accordance with the precedent paragraph (1) and (2) or any delay arising therefrom shall be deemed to be proper performance of the Carriage and shall not be breach of or deviation from contract.
- (4) In case of paragraphs (1)(f), (h) and (i), the Carrier shall not be liable for any loss of or damage to the Goods caused by such operations and the Merchant shall indemnify the Carrier for the cost of all measures taken as above.

## CHAPTER 3 - RESPONSIBILITY AND UNDERTAKINGS OF THE MERCHANT

### 14 Responsibility of the Merchant

- (1) All the persons coming within the definition of Merchant in Clause 1 shall be jointly and severally liable to the Carrier for the due fulfillment of all obligations undertaken by the Merchant in this Bill of Lading and/or required by law.
- (2) The Merchant shall indemnify the Carrier against all loss, damage, fines and expenses, arising or resulting from any breach of obligations and/or warranties of the Merchant or of any clause in connection with the Goods for which the Carrier is not responsible.
- (3) The Merchant shall comply with all regulations or requirements of customs, ports and/or other authorities and shall bear and pay all duties, taxes, fines, imposts, expenses or losses (including, without prejudice to the generality of the foregoing, freight for any additional carriage undertaken) incurred or suffered by reason of any failure to so comply, or by reason of any illegal, incorrect, or insufficient marking, number or addressing of the Goods or the discovery of any drugs, narcotics, stowaways or other illegal substances within containers or cases packed by the Merchant or inside Goods supplied by the Merchant, or stamp duty imposed by any country, and shall indemnify the Carrier in respect thereof.

### 15 Undertakings of the Merchant in Respect of Claims

- (1) The Merchant undertakes not to file legal action for loss of and/or damage to the Goods and/or delay of the Carriage against the Carrier and/or the vessel at any foreign jurisdiction other than the Tokyo District Court designated at Clause 7 (1) above.
- (2) The Merchant undertakes that no claim or allegation shall be made against any servant, agent, subsidiary and/or Sub-Contractor of the Carrier which imposes or attempts to impose upon any of them, or upon any vessel owned or operated by any of them, any liability whatsoever in connection with the Goods, and if any such claim or allegation or legal action should nevertheless be made, the Merchant shall indemnify the Carrier against all consequences thereof.
- (3) Without prejudice to the foregoing, every such servant, agent, subsidiary and/or Sub-Contractor of the Carrier shall have the benefit of all provisions herein benefiting the Carrier as if such provisions were expressly for their benefit, and in

entering into this contract, the Carrier, to the extent of those provisions, does so not only on its own behalf, but also as agent and trustee for such servants, agents, subsidiary and/or Sub-Contractors.

## **16 Safety and Legality of the Goods**

- (1) The Merchant undertakes that;
  - (a) the nature and legality of the Goods and sufficiency of the packing condition is to be safe and durable for the Carriage and
  - (b) any information on the safety of the Goods and sufficiency of the packing condition during the Carriage is to be given to the Carrier before the shipment of the Goods, whether or not such information is known to the Carrier.
- (2) In particular, the Merchant undertakes not to tender for transportation of any Goods which are of a dangerous, inflammable, radio-active, or damaging nature without previously giving written notice of all up to date information within his knowledge as to requirements for the safe Carriage of the Goods and any other information with respect to the Goods including their nature and the method of rendering them innocuous, with the full names and addresses of the shipper and the consignee, to the Carrier and 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.
- (3) The Carrier shall not be liable for loss of and/ or damage to the Goods and/ or delay of the Carriage caused by the breach of undertakings of the paragraphs (1) and (2), and the Merchant shall indemnify the Carrier thereof.

## **17 Weight Declaration of the Goods**

- (1) The weight must be declared by the Merchant in writing before receipt by the Carrier and must be marked clearly and durably on the outside of the piece or package in letters and figures not less than two inches high.
- (2) In case of the Merchant's failure in his obligations under the preceding paragraph, the Carrier shall not accept the Goods, and, even if he accepts, shall not be responsible for any loss of and/or damage to the Goods and/or delay of the Carriage.
- (3) The Merchant shall be liable for loss of or damage to any property or for personal injury arising as a result of the Merchant's said failure and shall indemnify the Carrier against any kind of loss, damage or liability suffered or incurred by the Carrier as a result of such failure.

## **18 Marks on the Goods**

- (1) The Merchant undertakes that
  - (a) the marks are clearly and durably stamped or marked upon the Goods or package(s) by the Merchant before the shipment in letters and numbers not less than two inches high, together with the names of the port of discharge and/or destination,
  - (b) such marks correspond to the marks shown on this Bill of Lading and also,
  - (c) such marks, in all respects, comply with all laws and regulations in force at the ports of loading and discharge and/or destination.
- (2) The Merchant shall indemnify the Carrier against all loss, damage, liability to third party, expenses, penalties and fines arising out of or resulting from incorrectness or incompleteness thereof.

## **19 Readiness of the Goods for Loading and Delivery**

- (1) The Merchant shall be under an obligation to make the Goods in readiness for the loading into the vessel timely on the schedule of the vessel at the port of loading and to take the delivery of the Goods at the port of discharge as soon as the Carrier is ready for delivery of the Goods.
- (2) In case there is delay of the schedule of the vessel due to the failure of the Merchant to do so, the Merchant shall pay for detention charge.
- (3) It is confirmed that the Merchant cannot refuse the delivery of the Goods even if the Goods has been damaged as far as the identity of the Goods remains unchanged.
- (4) "The Merchant shall indemnify the Carrier against all loss, damage, expenses, penalties and fines incurred by the Carrier arising out of refusal of the delivery of the Goods."

## **CHAPTER 4 - PERFORMANCE OF OPERATION IN RESPECT OF CARRIAGE**

## **20 Stowage**

- (1) The Goods shall not be carried in the refrigerated, ventilated, insulated, heated or any other special compartments but shall be carried in the ordinary compartments, unless
  - (a) Special arrangements for such stowage have been agreed upon in writing prior to

shipment between the Carrier and the Merchant,

- (b) Such special arrangements are on the face of this Bill of Lading, and
- (c) Special freight as required has been prepaid.

(2) The Carrier shall not be liable for any loss of and/or damage to the Goods and/or delay of the Carriage arising out of or resulting from such stowage in the ordinary compartments.

(3) Goods stowed in poop, forecastle, deckhouse, shelter deck, passenger space, bunker space, or any other covered space shall be deemed to be stowed under deck for all purposes, including general average. The Merchant agrees that the Goods need not be stowed under deck and that they may be stowed on deck unless the Merchant informs the Carrier in writing before delivery of the Goods to the Carrier that under deck stowage is required.

## **21 Discharge**

The Goods may be discharged from the vessel, with or without notice of arrival or discharge to the Merchant, as soon as the vessel is ready to do so and continuously Sundays and holidays included, at all such hours by day or by night as the Carrier may determine, no matter what the state of the weather or custom of the port may be.

## **22 Delivery**

- (1) In any case the Carrier's responsibility shall cease at the time when the Goods are discharged from the vessel and in any case all risks and expenses (including expenses for landing, lighterage, storage, cartage, port charges, etc.) incurred after discharge from the vessel shall be borne by the Merchant, notwithstanding any custom of the port to the contrary. The Goods shall in any event be considered to be delivered to the Merchant at his own risk and expense in every respect when taken into the custody of customs or other authorities.
- (2) The Carrier shall be responsible for delivery only in accordance with the marks stamped on the Goods or the package(s) by the Merchant and shall not be liable for failure or delay in delivery of the Goods in accordance with incorrect marks.
- (3) Goods which cannot be identified as to marks and numbers, cargo sweepings, liquid residue and any unclaimed goods not otherwise accounted for shall be allocated for the purpose of completing delivery to the various merchants of goods of like character, in proportion to any apparent shortage, loss of weight or damage, and such Goods or parts thereof shall be accepted as full and complete delivery.

- (4) Irrespective of any agreements for the direct delivery of the Goods from the vessel's tackle or hold to the Merchant, the Carrier is hereby authorized by the Merchant to discharge the Goods onto a wharf, quay and into lighters, barges, craft or warehouse selected by the Carrier.
- (5) If the Carrier makes a special agreement to deliver the Goods at a specified dock or wharf, the Carrier is to make such delivery only if, in the sole judgment of the Carrier,
  - (a) the vessel can safely, under her own power, proceed to, lie at, and return from the said dock or wharf always afloat at any time of tide, and
  - (b) such dock or wharf is available for the vessel to discharge immediately, and otherwise the Goods shall be discharged at any other place and the Carrier's responsibility shall then cease.
- (6) Optional delivery shall be only granted when arranged prior to the Carriage and so expressly provided herein. The Merchant desiring to avail himself of the option so expressed must give notice in writing to the Carrier at the first port of the vessel's call named in the option at least 48 hours prior to the vessel's arrival there, otherwise the Goods shall be landed at any of the optional ports at the Carrier's option and the Carrier's responsibility shall then cease.
- (7) If the Goods be unclaimed within 30 days after discharge from the vessel, or if, in the opinion of the Carrier, they are likely to deteriorate, decay, become worthless or incur charges whether for storage or otherwise in excess of their value, they may, at the Carrier's discretion and subject to the Carrier's lien, be sold, abandoned or dealt with otherwise, solely at the risk and expense of the Merchant. The Carrier shall not be required to give any notice of disposition of the Goods under this Clause.

## 23 Overcarriage

In case the Goods or any part thereof cannot be found during the vessel's stay at the port of discharge, the Goods are, when found, to be forwarded to their destination at the Carrier's expense but free of liability for any loss, depreciation or damage arising from over carriage or return carriage.

## 24 Through Carriage

- (1) In case of through carriage under this Bill of Lading, the Merchant constitutes the Carrier his agents to enter into contract with others for the pre-carriage and/or

on-carriage of the Goods and/or for the storing, lightering, transhipment or other dealing therewith, prior to, or in the course of, or subsequent to the Carriage in the Carrier's vessel without any liability attaching to him in respect of such agency.

(2) The responsibility of each carrier acting as such is limited to that part of the transport actually undertaken by him, and the Carrier shall not be under any liability for damage and/or loss arising from whatsoever cause during any other part of the transport, even though the freight for the whole transport has been collected by the Carrier.

## CHAPTER 5 - SPECIAL GOODS

### 25 Deck Cargo and Live Animals

Goods which are stated herein to be carried on deck are accepted and carried solely at the risk of the Merchant without responsibility on the part of the Carrier for loss or damage of whatsoever nature arising during the Carriage by sea whether caused by unseaworthiness or negligence or any other cause whatsoever and the Merchant shall indemnify the Carrier against any claim, loss, damage or expense arising in consequence thereof.

### 26 Dangerous Goods and Contraband

(1) If the requirements of Clause 16 are not complied with or if the Goods are found to be contraband or prohibited by any laws or regulations of the port of loading, discharge or call or any place or waters during the Carriage, the Goods may, at any time or place, be unloaded, destroyed, or rendered harmless without compensation and the Merchant shall indemnify the Carrier against all loss, damage or expenses arising out of the Goods being tendered for transportation or handled or carried by the Carrier. Further, the Carrier shall be under no liability to make any general average contribution in respect of such Goods.

(2) Whether or not the Merchant or the Carrier is aware of the nature of such Goods, the Merchant shall indemnify the Carrier against all claims, loss, damage or expenses arising in consequence of the Carriage of such Goods.

### 27 Valuable Goods

The Carrier shall not be liable to any extent for any loss of or damage to or in connection with platinum, gold, silver, jewellery, precious stones, precious metals, radioisotopes, precious chemicals, bullion, specie, currency, negotiable instruments, securities, writings,

documents, pictures, embroideries, works of art, curious, heirlooms, collections of every nature or any other valuable goods whatsoever including goods having particular value only for the Merchant, unless the true nature of the Goods have been declared in writing by the Merchant before shipment of the Goods, and the same is inserted in this Bill of Lading and the additional charges are required have been prepaid in addition to freight.

## **28 Iron and Steel Goods**

- (1) In case of the iron, steel and metal goods which are, at the time of the shipment, in ordinary external condition of rust, corrosion, oxidation, moisture, scratch, dent or bend, the term "apparent good order and condition" on the face hereof does not mean any admission or representation by the Carrier as to the absence of such ordinary rust, corrosion, oxidation, moisture, scratch, dent or bend and the Carrier shall not be liable to the Merchant (including the holder of this Bill of Lading in good faith) for such ordinary disorder.
- (2) In case of iron and steel, angles, bars, channels, etc. shipped loose or in bundles, the Carrier shall not be responsible for correct delivery, and all expenses incurred at the port of discharge consequent upon insufficient securing or marking shall be paid by the Merchant unless;
  - (a) every piece is distinctly and permanently marked with oil paint;
  - (b) every bundle is securely fastened, distinctly and permanently marked with oil-paint and metal-tagged, so that each piece or bundle can be distinguished at the port of discharge.

## **29 Cotton**

- (1) As the Carrier has not reasonable means of checking the marks upon the cotton at the time of shipment, any reference to the marks on the face hereof is made at the Merchant's request only for the Merchant's convenience and the Carrier shall not be liable for the inaccuracy thereof.
- (2) The Merchant shall take delivery of the cotton actually loaded at the port of loading and shall not refuse to do so merely because of discrepancy of the marks between those stated on the face hereof and those shown upon the cotton.

## **27 Lumber and Timber**

- (1) In case of the lumber, timber and products thereof which are, at the time of shipment, in the ordinary external condition of chafage, breakage, hook holes,

split, broken pieces, stain, warps, shakes and/or decoloration, the term "apparent good order and condition" on the face hereof does not mean any admission and representation by the Carrier as to the absence of such ordinary chafage, breakage, hook holes, split, broken pieces, stain, warps, shakes and /or decoloration and the Carrier shall not be liable for such ordinary disorder.

- (2) In case of insect damage to the lumber, timber and products thereof, the Carrier shall not be liable unless the Merchant proves that such Goods has been properly fumigated before the shipment and gives notice in writing to the Carrier need of fumigation of the cargo holds of the vessel before the shipment.

### **31 Bulk Cargo**

- (1) The quantity or weight of the Goods shown on the face hereof is ascertained by a party other than the Merchant and the Carrier, who have no reasonable means of checking the accuracy thereof, and agreed to be stated herein only for the Merchant's convenience, without constituting any evidence against the Carrier.
- (2) The Carrier shall not be responsible for shortage of the Goods based upon the discrepancy between the measurement on the shore scales before the shipment and after the discharge of the Goods or between the draft surveys at the port of loading and the port of discharge if the Carrier proves that all the Goods loaded at the port of loading has been fully discharged at the port of discharge.

### **32 Secondhand and Other Unpacked Goods**

- (1) The term "apparent good order and condition" when used in this Bill of Leading with reference to second hand automobiles, rolling stocks, tractors, machinery and all other unpacked Goods does not mean that the Goods when received were free of visible bent, dent, scratch, hole cut and/or bruise.
- (2) It is mutually understood and agreed that all unpacked Goods shall be construed insufficiency of packing, and the Carrier shall in no event be held responsible for loss and/or damage resulting therefrom.

## **CHAPTER 6 - CONTAINERS**

### **33 Stowage of Containers under or on Deck**

The Goods packed in containers (other than flats or pallets) whether by the Carrier or the Merchant, may be carried on or under deck without notice to the Merchant and

without on deck notation on the face of this Bill of Lading. All such Goods, whether carried on deck or under deck, shall participate in general average and such Goods (other than live animals) shall be deemed to be within the definition of the Goods for the purposes of Hague Rules Legislations.

#### 34 “Apparent Good Order and Condition” for Shipper’s Pack Container

If a container and/or a case has not been packed by or on behalf of the Carrier but by the Merchant, the term “apparent good order and condition” stated on the face of this Bill of Lading does not mean the apparent external good order and condition of the Goods stowed in the container but merely means the apparent external good order and condition of the container.

#### 35 Liability of the Carrier for Shipper’s Pack Container

- (1) The Carrier shall not be liable for loss of and/ or damage to the Goods caused by:
  - (a) The improper manner in which the container and/or the case has been packed, or
  - (b) The unsuitability of the Goods for Carriage in the container and/or the case supplied, or
  - (c) The unsuitability or defective condition of the container and/or the case.
- (2) In regard to (c) of the preceding, even if the container and/or the case has been supplied by or on behalf of the Carrier, the exception of liability of the Carrier for the unsuitability and defective condition of the container shall be still applicable unless condition of such unsuitable and defective container has been noticed to the Carrier by the Merchant even though such unsuitability and defective condition of the container had been apparent upon inspection by the Merchant at or prior to the time when the container and/or the case was packed.
- (3) Containers with Goods packed by the Merchant shall be supplied with an intact high security seal by the Merchant, and the seal number shall be noted in writing on this Bill of Lading by the Merchant.
- (4) If the container is discharged from the vessel at the port of discharge in apparent external good order and condition with seals intact, such discharge shall be deemed as full and complete performance of the Carrier’s obligation hereunder and the Carrier shall not be liable for any loss or damage to the Goods.

The Merchant shall indemnify the Carrier against any loss, damage, liability or expense caused by one or more matters referred to in the preceding paragraph (1).

## **36 Return of Container Supplied by Carrier**

If Containers supplied by or on behalf of the Carrier are unpacked at the Merchant's premises, the Merchant is responsible for returning the empty containders, with interiors brushed and clean, to the point or place designated by the Carrier, his servants or agents, within the time prescribed. Should a container not be returned within the time prescribed, the Merchant shall be liable for any detention, loss or expenses which may arise from such failure to return.

# **CHAPTER 7 - LIABILITY OF THE CARRIER FOR THE GOODS**

## **37 Scope of Liability**

### **(1) Assessment of Damages**

When the Carrier is liable for compensation in respect of any loss of or damage to the Goods, such compensation shall be calculated by reference to the value of the Goods at the place and time they are discharged from the vessel, or at the place and time they should have been discharged.

### **(2) Invoice Value**

For the purpose of determining the extent of the Carrier's liability for loss of or damage to the Goods, the value of the Goods is presumed to be the invoice value plus freight and insurance premium, if paid.

### **(3) Limitation of Liability**

Notwithstanding the preceding paragraphs, the Carrier shall not be liable for loss or damage in an amount exceeding (1) 666.67 Units of Account of Special Drawing Right (SDR) per package of 2 Units of Account of SDR per kilograms of gross weight of the Goods lost or damaged, whichever is the higher.

### **(4) US COGSA**

If this Bill of Lading covers the Goods moving to or from the U.S.A. (including its districts, territories or possessions) and if US COGSA is compulsorily applicable, then the amount of the foregoing limitations shall instead be U.S. \$500 per package or customary freight unit.

### **(5) Container**

Where the cargo has been packed into container(s) or unitized into similar article(s) of transport by or on behalf of the Merchant, and when the number of packages or units packed into container(s) or unitized into similar article(s) of transport is not enumerated on the face hereof, each container or similar article including the entire

contents thereof shall be considered as one package for the purpose of the application of the limitation of liability provided for herein.

(6) Declaration of Value of the Goods

Notwithstanding the foregoing, the Carrier shall be liable for loss and or damage to the Goods in amount of the value of the Goods only if,

- (a) The value of the Goods higher than the amounts of limitation in the paragraphs of (3) and (4) above has been declared in writing by the Merchant before shipment of the Goods,
- (b) Such declared value of the Goods has been inserted in this Bill of Lading together with nature thereof, and
- (c) the additional charges as required have been prepaid in addition to freight, provided, always, that this declaration of the value of the Goods embodied in the Bill of Lading shall be *prima facie* evidence, but shall not be conclusive on the Carrier.

Therefore,

- (a) if the actual value of the Goods per package or unit exceeds such declared value, the liability of the Carrier shall be limited to the declared value, and
- (b) if the declared value is markedly higher than the actual value, the Carrier shall in no event be liable to pay any compensation, .It is confirmed and agreed that a good opportunity to declare the value of the Goods has been given to the Merchant by reason of the "Declared value column" on the face of this Bill of Lading.

(7) Partial Loss or Damage

Any partial loss or damage shall be adjusted pro rata on the basis of such invoice or declared value

(8) Delay and Consequential Damage

The Carrier does not undertake that the Goods shall arrive at the port of discharge at any particular time or to meet any particular market or use, and the Carrier shall in no circumstances be liable for delay or for any indirect or special or consequential loss or damage incurred by the Merchant.

## **38 Notice of Loss or Damage and Time Bar**

(1) Notice of Claim

Unless notice of loss or damage to the Goods and general nature of it be given in writing to the Carrier at the port of discharge at the time of the delivery of the

Goods in accordance with Clauses 21 and 22 or, if the loss or damage is not apparent, within three days thereafter, the Goods shall be deemed to have been delivered as described herein.

(2) One Year Time Bar

In any event the Carrier and the vessel shall be discharged from all liability in any capacity whatsoever for any loss or damage to the Goods, unless suit is brought within one year after the delivery of the Goods or the date when the Goods should have been delivered.

## CHAPTER 8 - FREIGHT, CHARGES AND LIEN

### 39 Freight

- (1) The amount of freight has been calculated and agreed to on the basis of particulars of the quantity, weight or volume of the Goods, as the case may be, furnished by or on behalf of the Merchant. If the particulars furnished by or on behalf of the Merchant are incorrect, it is agreed that a sum equal to double of the correct freight less the freight charged shall be payable as liquidated damage to the Carrier, provided that the Carrier's Tariff does not stipulate otherwise.
- (2) All freight shall be paid to the Carrier by the Merchant in cash without any set-off, counter claim, deduction or stay of execution either at or prior to the time agreed for payment or at latest before delivery of the Goods.
- (3) Freight shall be deemed fully earned on receipt of the Goods by the Carrier, whether the Goods are lost or not, and shall be paid and non-returnable in any event.

### 40 Dead Freight

If, for any reason whatsoever, the Goods or any part thereof are not available when the vessel is ready to load (Berth term) or the Merchant fails to load the Goods (FI term), the Carrier is relieved of any obligation to load such Goods and the vessel may leave the port without further notice and dead freight shall be paid by the Merchant as liquidated damage.

### 41 Other Charges, Cost and Expenses Payable by the Merchant

- (1) The Goods once shipped cannot be taken away or disposed of by the Merchant and/or the holder of this Bill of Lading except upon the Carrier's consent and

against payment of full freight and compensation for any loss, damage or expense sustained by the Carrier through such taking away or disposal.

- (2) The Merchant shall be liable for and indemnify the Carrier against all dues, duties, taxes and charges including consular fees levied on the Goods, or all fines and/or loss sustained or incurred by the Carrier in connection with the Goods howsoever caused, including the Merchant's failure to comply with laws and regulations of any government or public authorities in connection with the Goods or to procure consular, Board of Health or other certificate to accompany the Goods.
- (3) Charge payable by the Merchant includes court costs, legal fee and expenses incurred in collecting monies due to the Carrier.

## **42 Return Cargo**

The Merchant shall be liable for return freight and charges on the Goods refused exportation or importation by any government or public authorities or by the Merchant at the port of discharge and returned to the port of loading at a liberty of the Carrier.

## **43 Lien over the Goods**

- (1) The Carrier shall have a lien on the Goods and any documents relating thereto for:
  - (a) all sums payable to the Carrier under this contract including general average contributions, to whomsoever due, and
  - (b) all sums due from the Merchant to the Carrier under any other contract.
- (2) For recovering any sums due, the Carrier shall have the right to sell the Goods by public auction or private sale, without notice to the Merchant. In any event, any lien shall extend to cover the cost of recovering any sums due.

# **CHAPTER 9 - OTHER TERMS**

## **44 General Average and Salvage**

- (1) General Average

Any general average on a vessel operated by the Carrier shall be adjusted according to the York/Antwerp Rules of 1994 (or at the election of the Carrier, York/Antwerp Rules 1974 as amended in 1990) at any port or place and in any currency at the option of the Carrier.

Any general average on a vessel not operated by the Carrier (whether a seagoing or inland waterways vessel) shall be adjusted according to the requirements of the operator of that vessel.

In either case the Merchant shall give such cash deposit or other security as the Carrier may deem sufficient to cover the estimated general average contribution of the Goods before delivery if the Carrier requires. The Carrier shall be under no obligation to exercise any lien for general average contribution due to the Merchant.

(2) Salvage

If salvage services are rendered to the vessel and the Goods then, as soon as requested to do, the Merchant shall provide salvage security in the amount and in the form requested by the salvor.

In the event of any failure to provide security promptly the Merchant shall indemnify the Carrier for all loss, damage and expenses, including consequential loss caused by delay, suffered by the Carrier.

(3) Damage to Environment

All expenses in connection with a general average or salvage act to avoid damage to the environment always to be considered general average expenses.

## **45 Amended Jason Clause and Both-to-Blame Collision Clause**

The New Jason Clause and the Both to Blame Collision Clauses published by the Baltic and International Maritime Council are hereby incorporated into this Bill of Lading and accordingly, the Carrier shall be entitled to recourse claim against the Merchant.

## **46 Fire and Nuclear Incident**

- (1) The Carrier shall not be responsible for any loss or damage to the Goods arising or resulting from fire occurring at anytime, unless caused by the actual fault or privity of the Carrier.
- (2) The Carrier shall not be responsible for any loss or damage to the Goods arising or resulting from nuclear incident occurring at anytime, unless caused solely by personal willful misconduct of the Carrier.

## **47 Defenses and Limits for the Carrier**

The defenses and limits of liability provided for in this Bill of Lading shall apply in any action against the Carrier for all liability whatsoever in respect of the Goods whether

the action be founded in contract, in tort or otherwise.