

## **BILL OF LADING TERMS AND CONDITIONS**

### **1. DEFINITIONS**

When used in this Bill of Lading:

- a. "Carriage" means the whole of the operations and services undertaken or performed by or on behalf of the Carrier in respect of the Goods covered by this Bill of Lading.
- b. "Carrier" means the company described on the reverse side of this Bill of Lading as the Carrier and on whose behalf the Bill of Lading has been signed.
- c. "Charges" includes freight, demurrage, detention and all expenses and money obligations incurred and payable by the Merchant.
- d. "Container" means any container (including an open top container), flat rack, platform, trailer, transportable tank, pallet or any other similar article used to consolidate the Goods and any connected equipment, including but not limited to trucks.
- e. "Goods " means the cargo described on the face of this Bill of Lading and includes any Containers or Packages not supplied by or on behalf of the Carrier.
- f. "Hague Rules" means the provisions of the International Convention for the Unification of Certain Rules relating to Bills of Lading signed at Brussels on 25<sup>th</sup> August 1924.
- g. "Multimodal Transport" means Carriage of the Goods under this Bill of Lading from a place of receipt other than the port of loading and/or to a place of delivery other than the port of discharge.
- h. "Merchant" includes the shipper, consignor, consignee, owner, and receiver of the Goods, the holder of this Bill of Lading, any person owing or entitled to the possession of the Goods or this Bill of Lading, any person having a present or a future interest in the Goods, any person acting on behalf of any of the aforementioned persons or any principal of the aforementioned persons.
- i. "Package" includes Containers, vans, trailers, pallets, vehicles, and similar packaged units of any description, but not Goods shipped in bulk.
- j. "Port-to-Port Transport" means Carriage of the Goods under this Bill of Lading other than Multimodal Transport.
- k. "US COGSA" means the US Carriage of Goods by Sea Act 1936.
- l. "Vessel" includes the Vessel identified on the face of this Bill of Lading and any ship, barge, feeder Vessel or other means of transport that is substituted, in whole or in part, for that Vessel.

### **2. CARRIER'S LIABILITY: PORT-TO-PORT TRANSPORT**

- a. Where the Carriage is Port-to-Port Transport, then the liability (if any) of the Carrier for loss of or damage to the Goods occurring between the time of loading at the Port of Loading and the time of discharge at the Port of Discharge shall be

determined in accordance with the Hague Rules, Articles 1-8 inclusive, excluding Article 3 Rule 6 and Article 4 Rule 5. However, in case of Carriage to or from the United States of America, such liability shall be determined in accordance with US COGSA.

- b. Where US COGSA applies, then the provisions stated in the said Act shall govern before loading on the Vessel or after discharge there from, as the case may be, during Carriage to or from a container yard or container freight station in or immediately adjacent to the sea terminal at the Port of Loading and/or Discharge.

### **3. CARRIER'S LIABILITY: MULTIMODAL TRANSPORT**

Where the Carriage is Multimodal Transport, the Carrier undertakes to perform and/or in his own name to procure performance of the Carriage from the Place of Receipt or the Port of Loading, whichever is applicable, to the Port of Discharge or the Place of Delivery, whichever is applicable, and, save as is otherwise provided for in this Bill of Lading, the Carrier shall be liable for loss or damage occurring during the Carriage only to the extent set out below:

- a. Where the stage of Carriage where loss or damage occurred is not known.

#### (1) Exclusions

The Carrier shall be relieved of liability for any loss or damage where such loss or damage was caused by:

- (i) an act or omission of the Merchant or person acting on behalf of the Merchant other than the Carrier, his servant, agent or Subcontractor,
- (ii) compliance with instructions of any person entitled to give them.
- (iii) insufficient or defective condition of packing or marks,
- (iv) handling, loading, stowage or unloading of the Goods by the Merchant or any person acting on his behalf,
- (v) inherent vice of the Goods,
- (vi) strike, lock out, stoppage or restraint of labour, from whatever cause, whether partial or general,
- (vii) a nuclear incident,
- (viii) any cause or event which the Carrier could not avoid and the consequences whereof he could not prevent by the exercise of reasonable diligence.

#### (2) Burden of Proof

The burden of proof that the loss or damage was due to one or more of the causes or events specified in this Clause 3a shall rest upon the Carrier. Save that if 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 Clause 3a(1)(iii), (iv) or (v), 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.

- b. Where the stage of Carriage where the loss or damage occurred is known.  
Notwithstanding anything provided for in Clause 3a, 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:
    - (i) cannot be departed from by private contract to the detriment of the Merchant, and
    - (ii) would have applied if the Merchant had made a separate and direct contract with the Carrier in respect of the particular stage of the Carriage during which 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; or
  - (2) in case of Carriage to or from the United States of America by the provisions of US COGSA if the loss or damage is known to have occurred during Carriage by sea to or from the USA or during Carriage to or from a container yard or container freight station in or immediately adjacent to the sea terminal at the Port of Loading or of Discharge in ports of the USA; or
  - (3) by the Hague Rules Articles 1-8 inclusive, excluding Article 3 Rule 6 and Article 4 Rule 5, where the provisions of Clauses 3b(1) or (2) do not apply if the loss or damage is known to have occurred during Carriage by sea; or
  - (4) where the provisions of Clause 3b(1), (2) and (3) above do not apply, in accordance with the contract of carriage or tariffs of any inland carrier in whose custody the loss or damage occurred or in the absence of such contract or tariff by the provisions of Clause 3a.

#### **4. COMPENSATION AND LIABILITY PROVISIONS**

- a. The defenses and limits of liability provided in or incorporated by this Bill of Lading and governing law shall apply in any action against the Carrier, whether the action is founded in contract, in tort, or otherwise.
- b. The Carrier shall have no liability whatsoever for any loss or damage to the Goods while in its actual or constructive possession before loading on the first means of transport or after discharge from the last means of transport, howsoever caused.
- c. Basis of Compensation: if 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 commodity exchange price at the place and time of delivery to the Merchant or at the place and time when they should have been so delivered or, if there is no such price, according to the current market price by reference to the normal value of Goods of the same kind and quality, at such place and time.
- d. Delay, Consequential Loss: the Carrier shall in no circumstances be liable for loss of profit, indirect or consequential loss or damage resulting from any cause whatsoever. The Carrier does not undertake that the Goods shall arrive at the port of discharge or destination at any particular time, or in time to meet any particular market or use and the Carrier shall not be responsible for any direct or indirect loss or damage which is caused through delay. Without prejudice to the foregoing, if the

Carrier is found liable for delay, liability shall be limited to the freight applicable to the relevant stage of the transport.

- e. Limitation of liability: unless a declared value has been noted in accordance with Clause 4f below, the Carrier's liability for any loss of or damage to or in connection with the Goods shall never exceed 2 Special Drawing Rights (SDRs) per kg of the Goods lost or damaged or 666.67 SDRs per Package or Container, whichever is the lesser. In case of Carriage to, from or through a port in the United States of America, the Carrier's liability shall not exceed USD 500 per Package or shipping unit or 2 SDRs per kg of the Goods lost or damaged, whichever is the lesser. The Carrier's liability shall never exceed the value of the Goods lost or damaged.
- f. Ad Valorem Declared Value of Packages or Units: the Carrier's liability may be increased to a higher value by a declaration in writing of the value of the Goods by the shipper upon delivery to the Carrier of the Goods for shipment, such higher value being inserted on the front of the Bill of Lading in the space provided and, if required by the Carrier, extra freight paid. In such case, if the actual value of the Goods exceeds the declared value, the Carrier's liability, if any, shall not exceed the declared value and any partial loss or damage shall be adjusted pro rata on the basis of such declared value.
- g. Where a Container is used to consolidate Goods, the Container including the Goods shall be considered the Package or unit, even if the number of packages or units inside the Container are stated on the reverse side of this Bill of Lading.

## **5. LIBERTIES**

- a. In any situation, whether or not existing or anticipated before commencement of the Carriage, which in the judgment of the Carrier (including but not limited to the Master and any person charged with the transport or safekeeping of the Goods) has given or is likely to give rise to danger, injury, loss, or delay to the Vessel, any person, the Goods, or any property, or has made or is likely to make it unsafe, impracticable, unlawful, or against the interest of the Carrier or the Merchant to commence the Carriage, to continue the Carriage, to discharge the Goods at the port of discharge, or to deliver the Goods at the place of delivery, the Carrier shall be entitled:
  - (i) to unpack the Containers or otherwise dispose of the Goods in such manner as the Carrier may consider advisable, at the risk and expense of the Merchant;
  - (ii) before the Goods are loaded onto the Vessel or other means of transport, to cancel the contract of Carriage without compensation and to require the Merchant to take custody of the Goods and, upon his failure to do so, to store the Goods at a place selected by the Carrier, at the risk and expense of the Merchant;
  - (iii) if the Goods are at a place awaiting transshipment, to terminate the Carriage there and to store the Goods at a place selected by the Carrier, at the risk and expense of the Merchant;

- (iv) if the Goods are on the Vessel or other means of transport, to discharge the Goods or any part of them at a port or place selected by the Carrier, or to carry them back to the port of loading or place of receipt and there discharge them, at the risk and expense of the Merchant;
- (v) if the Goods are on the Vessel or other means of transport, to deliver them to the destination via alternate route(s) and/or mode(s) of transport at the risk and expense of the Merchant.

After any action taken according to this Clause 5a, the Carrier shall be free from any responsibility for further custody or Carriage of the Goods.

- b. If pursuant to Clause 5a above the Carrier makes arrangements to store, transship, or forward the Goods, it shall do so only as agent for and at the risk and expense of the Merchant, without any liability in respect of such agency. The Merchant shall reimburse the Carrier forthwith upon demand for all extra Charges incurred for any actions taken according to Clause 5a, including delay or costs and expenses to the Vessel, and the Carrier shall have a lien upon the Goods to that extent.
- c. The situations referred to in Clause 5a above shall include, but shall not be limited to, those caused by the existence or apprehension of war, hostilities, riots, civil commotions, or other disturbances; closure of, obstacle in, or danger to any port or seaway; blockage, prohibition, or restriction on commerce or trading; quarantine, sanitary, or other similar regulations or restrictions; strikes, lockouts, or other labor troubles whether partial or general and whether or not involving employees of the Carrier or its Subcontractors; congestion of port, sea terminal, or similar place; 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, landslip, or other obstacles to navigation or Carriage.
- d. The Carrier shall have the liberty without notice to the Merchant to: (i) carry the Goods as a single shipment or as several shipments using any means whatsoever to transport, store, load or carry the Goods (ii) carry the Goods on any Vessel whether named on the front hereof or not, (iii) transfer the Goods from one conveyance to another including transshipping the same (iv) at any place unpack and remove Goods which have been stuffed in or on a Container and forward the same in any manner whatsoever, (v) proceed at any speed and 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 whatsoever once or more often and in any order, (vi) load or unload the Goods from any conveyance at any place (whether or not the place is a port named on the front hereof as the intended Port of Loading or intended Port of Discharge) (vii) 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, (viii) permit the Vessel to proceed with or without pilot, to tow or be towed or to be dry-docked, (ix) permit

the Vessel to carry live animals, Goods of all kinds, dangerous or otherwise, contraband, explosives, munitions or warlike stores and sail armed or unarmed. The Carrier may discharge the Goods or any part of them at any port or place for transshipment, store them afloat or ashore, and forward them by any means of transport.

- e. The liberties set out in Clause 5a, b and d above may be invoked by the Carrier for any purpose whatsoever, whether or not connected with the Carriage of the Goods. Anything done in accordance with Clause 5a, b and d above or any delay arising there from shall be deemed to be within the contractual Carriage and shall not be a deviation of whatsoever nature or degree.
- f. If in the Carrier's opinion the Goods are in need of sorting, inspecting, mending, repairing, or reconditioning, or otherwise require protecting or caring for, the Carrier at its discretion may, by itself or through Subcontractors, and as agent for the Merchant, carry out such work at the risk and expense of the Merchant.
- g. In the cases referred to in all the proceeding paragraphs under this Clause 5, the Carrier may at any time postpone the Carriage of any part of the Goods contracted for herein till some later date or cancel in whole or in part the contract whether before or after this Bill of Lading is issued.

## **6. SUBCONTRACTING ; EXEMPTIONS AND IMMUNITIES OF SUBCONTRACTORS**

- a. "Subcontractor" includes stevedores, longshoremen, lighterers, terminal operators, warehousemen, truckers, agents, and any person, corporation, or other legal entity that performs any of the Carrier's obligations under this Bill of Lading, and includes the Subcontractor's own Subcontractor.
- b. The Carrier shall be entitled to subcontract on any terms the whole or any part of the handling, storage, or Carriage of the Goods and any duties undertaken by the Carrier in relation to the Goods.
- c. The Merchant undertakes to defend, indemnify and hold harmless the Carrier against all consequences of any claim or allegation made against any person or vessel whatsoever, other than the Carrier, including but not limited to, the Carrier's Subcontractors, servants or agents, any independent contractor and his servants or agents, and all others by whom the whole or any part of the Carriage, whether directly or indirectly, is procured, performed or undertaken, which claim or allegation imposes or attempts to impose upon any such person or vessel any liability whatsoever in connection with the Goods or the Carriage.
- d. Without prejudice to the foregoing, every Carrier's Subcontractor, servant or agent, every independent contractor and his servants or agents and all others by whom the whole or any part of the Carriage, whether directly or indirectly, is procured, performed or undertaken shall have the benefit of every right, defense, limitation and liberty of whatsoever nature herein contained or otherwise available to the Carrier, including the law and jurisdiction clause, as if such provisions were expressly for their 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 or trustee for such persons or vessels and they shall to this extent be or be deemed to be parties to this contract.

## **7. MERCHANT'S RESPONSIBILITY**

- a. The description and particulars of the Goods set out on the face hereof are furnished by the Merchant and the Merchant warrants to the Carrier that the description and particulars including, but not limited to, of weight, dimensions, content, measure, quality, condition, marks, numbers and value are correct and that the marks on the Goods or Packages correspond to the marks set out on the face hereof. The Carrier shall be under no responsibility whatsoever in respect of such descriptions or particular.
- b. The Merchant shall comply with all applicable laws, regulations and requirements of customs, port and other authorities and shall bear and pay (and indemnify and hold harmless the Carrier against) all duties, fines, taxes, liens, imposts, expenses and losses incurred or suffered in respect of the Goods or by reason of any illegal, incorrect or insufficient marking, numbering or addressing of the Goods.
- c. The Merchant warrants that the Goods are packed, stowed and lashed in a manner adequate to withstand the ordinary risks of Carriage having regard to their nature and in compliance with all laws, regulations and requirements, which may be applicable.
- d. The Merchant shall be liable for the loss of and/or damage to property (including, but not limited to, Containers) of the Carrier or any person or Vessel or any other person referred to in Clause 6a above, if this damage is caused before, during and/or after the Carriage, by the Goods, by the Merchant or by any person acting on his behalf or for which the Merchant is otherwise responsible.
- e. The Merchant shall defend, indemnify and hold harmless the Carrier against any loss, damage, delay, claim, liability or expense whatsoever arising from any breach by the Merchant of the provisions of this Bill of Lading or from any cause in connection with the Goods or the Carriage thereof for which the Carrier is not responsible.
- f. Containers, pallets or similar articles of transport supplied by or on behalf of the Carrier shall be returned to the Carrier in the same order and condition as handed over to the Merchant, normal wear and tear excepted, with interiors clean and within the time prescribed in the Carrier's tariff or elsewhere.
- g. Every person defined as "Merchant" is jointly and severally liable towards the Carrier for all the various undertakings, responsibilities and liabilities of the Merchant under or in connection with this Bill of Lading and shall pay the Charges due under it without deduction or set-off.

## **8. DANGEROUS GOODS, CONTRABAND AND ANTI-DRUG**

- a. The Carrier will carry Goods of an explosive, inflammable, radioactive, corrosive, damaging, poisonous, or dangerous nature only upon the Carrier's approval of a written application by the Merchant prior to the Carriage of such Goods. Such

application must accurately state the name, nature, and classification of the Goods, as well as how they are dangerous and the method of rendering them innocuous, together with the full names and addresses of the shipper and the consignee.

- b. The Merchant shall distinctly and permanently mark the nature and danger of such Goods on the outside of the Package or Container containing the Goods.
- c. The Merchant shall submit all documents or certificates in connection with such Goods required by any applicable statute or regulation, or required by the Carrier.
- d. Whenever it is discovered that the Goods have been received by the Carrier without compliance with Clause 8a, 8b and/or 8c above, or the Goods are found to be contraband or prohibited by any law or regulation, the Carrier shall be entitled to have such Goods rendered innocuous, thrown overboard, discharged, or otherwise disposed of, at the Carrier's discretion and without compensation to the Merchant, and the Merchant shall be liable for and shall indemnify the Carrier against any loss, damage, or liability including loss of freight, and any other Charges, costs and expenses directly or indirectly arising out of the custody or Carriage of such Goods or the Carrier's taking of the actions under this subpart.
- e. The Carrier may exercise the rights conferred upon it under Clause 8d whenever Goods received in compliance with Clause 8a, 8b and/or 8c above have become dangerous, even if not dangerous when received by the Carrier.
- f. The Carrier shall not be liable for, and the Merchant shall indemnify, defend and hold the Carrier harmless from, any death of or injuries to persons or loss of or damage to the Vessel, cargo or other property which may arise from the dangerous nature of the Goods.

## **9. DECK CARGO AND LIVE ANIMALS**

- a. Goods stowed in poop, forecastle, deck house, shelter deck, passenger space, or any other covered-in space, or stowed in a Container wherever placed, shall be deemed to be stowed under deck for all purposes including general average.
- b. Goods of any description whether containerized or not may be stowed on or under deck without notice to the Merchant and such stowage shall not be a deviation of whatsoever nature or degree. Subject to Clause 9c below, such Goods whether carried on or under deck shall participate in general average.
- c. Notwithstanding Clause 9b above, Goods which are carried on deck (and live animals, whether or not carried on deck) are carried without responsibility on the part of the Carrier for loss, damage, injury, disease or mortality thereof of whatsoever nature, whether caused by unseaworthiness or negligence or any other cause whatsoever. The Merchant shall defend, indemnify and hold harmless the Carrier against all and any extra costs incurred for any reason whatsoever in connection with the Carriage of live animals.



## **10. LOADING AND DELIVERY**

- a. Loading shall take place as fast as the Vessel is able to load, by day and - if required by the Carrier - also by night, Sundays and holidays. If Goods contracted for shipment are not available when the Vessel is ready to load, the Carrier is relieved of any obligation to load such Goods, and the Vessel may leave the port without further notice and dead freight is to be paid by the Merchant. The Carrier is entitled to land and receive the Goods or to appoint a person or a corporation for the landing and reception of the Goods. Whether appointed by the Carrier or not, anybody so acting is the Merchant's representative and the Merchant shall pay current Charges whether delivery is taken over side or on quay.
- b. The Merchant must be ready to take delivery of the Goods as soon as the Vessel is ready to deliver as fast as she is able to discharge, by day and - if required by the Carrier - also by night, Sundays and holidays. If the Goods are not taken by the Merchant at the time when the Vessel is entitled to call upon him to take delivery, or if they are not removed alongside the Vessel without delay, the Carrier shall be at liberty at the sole risk and expense of the Merchant to enter the Goods, to move them, to land them on to wharf, quay or into warehouse or to discharge them into craft, bulk, lighters, pack or unpack the Container and/or sell them with or without legal authority, and the Carrier's obligations under the contract of Carriage shall be considered as fulfilled.
- c. If the Goods are unclaimed for a reasonable time, or whenever in the Carrier's opinion the Goods will deteriorate or depreciate, the Carrier may at its discretion sell, abandon, or otherwise dispose of such Goods and any documents relating thereto at the risk and expense of the Merchant.
- d. The Carrier may at its discretion deliver the Goods at any time at the Vessel's side or at a customs house, warehouse, wharf, or any other place at the port of discharge or place of delivery shown on the face of this Bill of Lading.
- e. Delivery may be to the Merchant including his own bonded warehouses, to the Customs or other public authority, and the Carrier shall have no further responsibility for the Goods.
- f. Refusal by the Merchant to take delivery of the Goods in accordance with the terms of this Clause 10 and/or to mitigate any loss or damage thereto shall constitute a waiver by the Merchant to the Carrier of any claim whatsoever relating to the Goods or the Carriage thereof.
- g. Any Charges, demurrage and other expenses incurred after the Goods have left the Vessel or other means of transport, in particular expenses for controlling, sorting and delivery as well as for transport of the Goods from the ship to the quay in the event of discharge midstream or in open roads shall be borne by the Merchant. Furthermore, the quay and port dues charged on the cargo shall be for Merchant's account, the same as any additional expenses resulting from the Vessel or discharge being delayed from the construction of the Vessel or the way of stowing.

## **11. LIEN / PLEDGE ON GOODS**

The Carrier shall have a lien and/or a right of pledge on the Goods and any document relating thereto, which lien shall survive delivery, for all Charges, including but not limited to freight, dead freight, demurrage, detention, general average contributions, stevedoring charges, storage, container per diem expenses, and any other sums (including costs and attorney fees for recovering the Charges) chargeable to the Merchant under this Bill of Lading, and any other contract for custody or Carriage of the Goods. The Carrier may foreclose the lien and/or the right of pledge by selling the Goods and documents, without notice to the Merchant, privately or by public auction. If proceeds of the sale of the Goods fail to cover the amount due and the costs and fees incurred, the Carrier shall be entitled to recover the deficit from the Merchant.

## **12. FREIGHT AND CHARGES**

- a. Freight maybe calculated on the basis of the description of particulars furnished by the Merchant, who shall be deemed to have guaranteed to the Carrier the accuracy of the contents, quantity, dimensions, weight, measure, value, and other particulars as furnished at the time of receipt of the Goods by the Carrier, but the Carrier for the purpose of ascertaining the actual particulars may open the Container or Package at any time and at the risk and expense of the Merchant. In case of incorrect declaration of any particular, the Merchant shall be liable to the Carrier for:
  - (i) the balance of freight between the freight charged and that which would have been due had the correct particular been given, plus
  - (ii) costs and expenses incurred in determining the correct particular, plus
  - (iii) as liquidated and ascertained damages, an additional sum equal to the correct freight.
- b. Full freight to the place of delivery shall be completely earned upon receipt of the Goods by Carrier, whether the freight is stated or intended to be prepaid or to be collected at destination. The Carrier shall be entitled to all freight and other Charges due hereunder, whether actually paid or not, and to receive and retain such freight and Charges regardless whether the Vessel or the Goods be lost, or whether the Carrier takes any of the liberties allowed in this Bill of Lading. Full freight shall be paid on damaged or unsound Goods.
- c. The payment of freight and Charges shall be made in full and in cash without any offset or deduction.
- d. Goods received by the Carrier cannot be taken away or disposed of by the Merchant except upon the Carrier's consent and after payment of full freight and Charges due under this Bill of Lading.
- e. If the Goods are not available when the Vessel is ready to load, and unless the unavailability is caused by the failure of the Carrier to perform its obligations under this Bill of Lading, dead freight shall be paid by the Merchant.

- f. If the Merchant does not take delivery of the Goods when the Vessel is ready to deliver the Goods, demurrage and any other Charges shall be paid by the Merchant.
- g. The Merchant shall be liable for and shall indemnify the Carrier against:
  - (i) all duties, taxes, consular fees, and other charges levied on the Goods, and
  - (ii) all fines, damages, and losses sustained by the Carrier in connection with the Goods, including the Merchant's failure to comply with laws and regulations of any public authority in connection with the Goods, or failure to procure consular, board of health, or other certificates to accompany the Goods. The Merchant shall be liable for return freight and Charges on any Goods refused exportation or importation by any public authority.
- h. Any party performing forwarding services with respect to the Goods shall be considered to be the agent of the Merchant exclusively, and any payment of freight or Charges to such party shall not be considered to be payment to the Carrier.
- i. The Merchant shall be liable for Carrier's attorney fees, expenses and costs to collect any freight or Charges under this Bill of Lading.
- j. The Merchant shall be responsible for any additional war risks and/or piracy risk premium arising from the Vessel's call at the named discharge port herein which additional premium shall constitute a charge due hereunder against the Goods.
- k. When calculating and assessing freight for cars and self driving engines/vehicles, the car respectively the self driving engine/vehicle is deemed to be one unit, the freight being calculated per that unit.
- l. The Merchant shall be liable to the Carrier for any loss of, damage to, or delay, including demurrage and detention incurred by or sustained to Containers, pallets or similar articles of transport during the period between handing over to the Merchant and return to the Carrier.

### **13. NOTICE OF CLAIM AND TIME FOR SUIT AGAINST CARRIER**

- a. Unless notice of loss of or damage to the Goods and the general nature of such loss or damage is given in writing to the Carrier at the port of discharge or place of delivery before or at the time of delivery of the Goods or, if the loss or damage is not apparent, within 3 (three) days after delivery, the Goods shall be deemed to have been delivered as described on the face of this Bill of Lading.
- b. The Carrier shall be discharged from all liability in respect of the Goods and/or the Carriage, including but not limited to liability for non delivery, misdelivery, delay, loss or damage, unless suit is brought within nine months after delivery of the Goods or the date when the Goods should have been delivered.

### **14. GENERAL AVERAGE ; NEW JASON CLAUSE**

- a. General average shall be adjusted, stated, and settled at the port of place of the Carrier's option and according to the York-Antwerp Rules, 1994, and, as to matters not provided for by those Rules, according to the laws and usages of the

port of place of adjustment, and in the currency selected by the Carrier. The general average statement shall be prepared by the adjusters appointed by the Carrier. Average agreement or bond and such cash deposit as the Carrier may deem sufficient to cover the estimated contribution of the Goods and any salvage and special charges thereon, and any other additional securities as the Carrier may require, shall be furnished by the Merchant to the Carrier before delivery of the Goods.

- b. In the event of accident, danger, damage, or disaster before or after commencement of the voyage, resulting from any cause, 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 Goods and the Merchant shall jointly and severally contribute with the Carrier in general average to the payment of any sacrifices, loss, or expenses of a general average nature that maybe made or incurred, and shall pay salvage and special charges incurred in respect of the Goods. If a salving ship is owned or operated by the Carrier, salvage shall be paid for as fully and in the same manner as if such salving ship belonged to strangers. The Merchant agrees that damage to and expenses and sacrifices incurred by the Vessel, even if caused by the inherent vice or unseaworthiness of the Vessel, or by fault or neglect of the Master of Crew, shall be considered as matters of General Average and shall be contributed to the Merchant accordingly.

## **15. BOTH TO BLAME COLLISION**

If the Vessel comes into collision with another ship as a result of the negligence of the other ship and any act, neglect, or default of the Master, crew, pilot, or agent of the Vessel or Carrier in the navigation or in the management of the Vessel, the Merchant shall indemnify the Carrier against all loss or liability incurred directly or indirectly to the other ship or her owners or operators insofar as such loss or liability represents loss of or damage to the Goods or any claim paid or payable to the Merchant by the other ship or her owners or operators to the Merchant and set-off, recouped, or recovered by the other ship or her owners or operators as part of their claim against the Vessel or the Carrier. The foregoing provisions shall also apply where the owners, operators, or those in charge of any ship or objects other than or in addition to the colliding ships or objects are at fault in respect of a collision, contact, stranding, or other accident.

## **16. CARRIAGE OF METAL PRODUCTS; LUMBER; VEHICLES ; BULK PRODUCTS ; COTTON ; LIQUIDS**

- a. The term "apparent good order and condition" when used in this Bill of Lading does not mean:
  - (i) with reference to iron, steel, or metal products, that the Goods when received were free from visible rust or moisture, nicks, dents or bends;

- (ii) with reference to lumber, timber, plywood, or other wood products, that the Goods when received were free from visible stains, discoloration, moisture, shakes, holes, warps, chafage, breakage, or splitting;
- (iii) with reference to vehicles which included automobiles, trucks, rolling stocks, tractors, and machinery that the Goods when received were free of scratches, dents, nicks, bends, holes, or cuts;
- (iv) with respect to cotton or cotton products, that when the Goods were received the covering was sufficient, untorn, or in sound condition, or that there was no damages resulting from the condition of the covering.

If the Merchant so requests, a substitute Bill of Lading will be issued setting forth any notations as to the foregoing that may appear on the mate's or tally clerk's receipts or similar document.

- b. The Carrier shall not be liable for failure to deliver iron, steel, or metal products unless each piece and bundle is distinctly and durably marked and each bundle is securely fastened and tagged so that each piece and bundle can be distinguished at the port of discharge.
- c. When oil or other fluids are carried in bulk in the Vessel's tanks, they shall be pumped into and out of the Vessel at the risk and expense of the Merchant; all appliances for putting in and taking out the fluid will be provided by the Merchant; the Vessel will furnish steam for discharge, if required; and the pumping out of the Vessel's tanks shall be deemed to be complete delivery of all oil or other fluid delivered to the Vessel. With respect to such Goods, the Carrier shall not be liable for evaporation, spillage, or other loss in weight, volume, or contents and shall be liable only for leakage shown by the Merchant to be due to negligence, fault, or failure on the part of the Carrier. In the event of any leakage or spillage of oil or other fluids the Merchant shall accept such portion thereof that has leaked or spilled from the tanks in which stowed or contained (and from any other tanks on the Vessel containing such oil or other fluids) and run into bilges, or elsewhere, as may be allotted by the Carrier, and such allotment shall be deemed a full settlement for any loss in weight, volume, or contents. Notwithstanding any provision in this Bill of Lading to the contrary, in the case of agreements or freight engagements for the Transport of liquid Goods in bulk, the terms of the Bill of Lading, in addition to the terms of said agreements or said freight engagements shall govern the relations between the Carrier and the Merchant.

If there is any conflict between the terms of said agreements or freight engagements and this Bill of Lading, the terms of this Bill of Lading shall govern.

## **17. TEMPERATURE CONTROLLED CARGO**

- a. Goods, including Goods of a perishable nature, shall be carried in ordinary Containers without special protection, services or other measures unless there is noted on the reverse side hereof that the Goods will be carried in a refrigerated, heated, electrically ventilated or otherwise specifically equipped Container or are to receive special attention in any other way and such is agreed in writing with the Carrier.

- b. In the case of a temperature controlled Container stuffed by or on behalf of the Merchant, the Merchant undertakes that the Container and Goods have been properly pre-cooled, that the Goods have been properly stuffed in the Container and that its thermostatic controls have been properly set by the Merchant 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, damage or delay to the Goods caused by such non-compliance.
- c. The Carrier shall not be liable for any loss of, damage or delay to the Goods arising from defects, derangements, breakdown or stoppage of the temperature controlling machinery, plant, insulation or any apparatus of the Container, provided that the Carrier shall before or at the beginning of the Carriage exercise due diligence to maintain the refrigerated Container in an efficient state.
- d. Acknowledgement of receipt of the Goods in apparent good order and condition is not a representation that the Goods were verified by the Carrier as being at the carrying temperature or humidity designated by the Merchant.

## **18. GOVERNING LAW AND JURISDICTION**

- a. The contract evidenced by or contained in this Bill of Lading and/or any contractual and non-contractual dispute arising out of or in connection with this Bill of Lading and/or the Goods shall be exclusively governed by the law of the Netherlands except as otherwise provided in this Bill of Lading.
- b. Any and all action against the Carrier in respect of this Bill of Lading, the Goods or arising out of the Carriage, whether based on breach of contract, tort or otherwise, shall be brought before the District Court of Rotterdam which shall have exclusive jurisdiction.