

TERMS AND CONDITIONS

1. Definitions

"Carriage" means the whole or any part of the operations and services undertaken or performed by the carrier in respect of the goods covered by this bill of lading.

"Carrier" means the company stated on the reverse side of this bill of lading as being the carrier and on whose behalf this bill of lading has been signed.

"COGSA" means the Carriage Of Goods by Sea Act of the United States of America, approved on 16th April 1936, as amended.

"Combined transport" arises where the carriage under this bill of lading is not a port to port shipment.

"Port to port shipment" arises where the place of receipt and the place of delivery are not indicated at the reverse side of this bill of lading.

"Goods" means the whole or any part of the cargo received from the shipper for carriage and described on the reverse side of this bill of lading and includes any container, packing or equipment not supplied by or on behalf of the carrier.

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

"Hague rules" means the provisions of the International Convention for the Unification of Certain Rules relating to bills of lading signed at Brussels on 25th August 1924 and include the amendments by the protocol signed at Brussels on 23rd February 1968, but only if such amendments are compulsorily applicable to this bill of lading.

"Holder" means any person being rightfully in possession of this bill of lading.

"Merchant" includes the shipper, the consignee, the receiver of the goods, the holder of this bill of lading, any person owning or entitled to the possession of the goods or this bill of lading and any person having a present or future interest in the goods.

"Freight" includes all charges payable to the carrier in accordance with the applicable tariff and this bill of lading.

"Sub-contractor" includes the owner, charterer and operator of any vessel, stevedores, terminal operators, forwarders, consolidators and other independent contractors employed by or for the carrier in the performance of any of carrier's obligations hereunder.

2. Carrier's tariff.

The terms of the carrier's applicable tariff are incorporated herein. Particular attention is drawn to the terms therein relating to demurrage. Copies of the relevant provisions are obtainable from the carrier or his agents.

3. Warranty.

In agreeing to these terms and conditions the merchant warrants that he is, or has the authority to contract on behalf of, the person owning or entitled to the possession of the goods and this bill of lading.

4. Negotiability and title to the goods.

This bill of lading shall be non-negotiable unless made out "to order", in which event it shall be negotiable and shall constitute title to the goods.

5. Sub-contracting and indemnity.

- (1) The carrier shall be entitled to sub-contract on any terms the whole or any part of the carriage.
- (2) The merchant undertakes that no claim or allegation shall be made against any person or vessel whatsoever, other than the carrier. If nevertheless any such claim or allegation is made the merchant is obliged to indemnify and hold the carrier harmless against all consequences thereof. Without prejudice to the foregoing every such person or vessel shall have the benefit of all provisions herein contained benefitting the carrier or otherwise available to the carrier as if such provisions were expressly for his benefit and in entering into this contract the carrier does so not only on his own behalf but also as agent and trustee for such person.
- (3) The merchant shall indemnify and hold the carrier harmless against any claim or liability arising from the carriage of goods insofar as such claim or liability exceeds the carrier's liability under this bill of lading.
- (4) The defences and limits of liability provided for in this bill of lading shall apply in any action whether the action be founded in contract or in tort.

6. Carrier's responsibility.

(1) Port to port shipment.

- (a) When loss or damage has occurred between the time of loading of the goods and the time of discharge the responsibility of the carrier shall be determined in accordance with the compulsorily applicable provisions of the Hague Rules, the Hague-Visby Rules or the COGSA, as the case may be.
- (b) Prior to loading and after discharge the carrier is not liable for damages to or loss of the goods. The carrier is not responsible for acts or omissions of third parties, such as terminal operators, stevedores and freight stations. In the event that this bill of lading covers a shipment to or from the USA COGSA will apply before the goods are loaded on and after they are discharged from the vessel.
- (c) Unless notice of loss or damage has been given in writing to the carrier or his agent before or at the time of removal of the goods into the custody of the merchant or, if the loss or damage is not apparent, within 3 consecutive days, such removal shall be prima facie evidence of the delivery of the goods in the same condition as described in the bill of lading. Notwithstanding the aforesaid the merchant must prove that damages did not occur prior to loading on or after discharge from the vessel, if a container has been used to transport the goods.

(2) Combined transport.

- (a) Where the carriage is combined transport the carrier undertakes to perform the carriage from the place of receipt to the place of delivery. The carrier may only be liable for loss or damage occurring from the time the goods are taken into its charge until the time of delivery and only in as far and to the extent provided herein.
- (b) If the stage of carriage where the loss or damage occurred is known the carrier's liability shall be determined as follows:
 - By the provisions contained in any international convention or national law, which provisions can not be departed from by private contract and would have applied if the merchant had made a separate contract with the carrier in respect of the particular stage of the carriage where the loss or damage occurred.
 - If no international convention or national law as described above exists then the liability of the carrier shall be determined in accordance with Dutch law.
 - In the event that part of the combined transport is a shipment to or from the USA and the damage to or loss of the goods may have occurred during the sea leg to the USA or after discharge in the USA resp. before loading in the USA or during the sealeg from the USA COGSA applies. The carrier's maximum liability in respect to the goods shall not exceed U.S. \$ 500 per package or customary freight unit.
- (c) If the stage of carriage where the loss or damage has occurred is not known Dutch law will apply. However the liability of the carrier will not exceed 2 SDR per kg. of the gross weight of the goods lost or damaged or 666,67 SDR per package, whichever is the higher.

7. Sundry liability provisions.

(1) Basis of compensation.

Compensation shall be calculated by reference to the value of the goods at the place and time they are delivered to the merchant or should have been delivered. However compensation can never exceed the invoice value of the goods to be increased with freight and insurance premium.

(2) Hague rules limitation.

If the Hague Rules apply the liability of the carrier shall in no event exceed GBP 100 per package or unit.

(3) Delay.

The carrier does not undertake that the goods shall arrive at the port of discharge or the place of delivery at any particular time and the carrier shall in no circumstances be liable for consequential damages or losses caused by delay.

(4) Scope of application.

- The terms and conditions of this bill of lading shall at all times govern the responsibilities of the carrier in connection with or arising out of the supply of a container to the merchant.
- Save as is otherwise provided herein the carrier shall in no circumstances whatsoever and howsoever arising be liable for direct or consequential damages or losses.

(5) Mandatory inspection.

If by order of the authorities at any place the goods have to be inspected the carrier will not be liable for any loss or damage as a result of such an inspection. The carrier will be entitled to recover the costs of such an inspection from the merchant.

(6) Time bar.

The carrier shall be discharged of all liability unless suit is brought in the proper forum and written notice thereof received by the carrier within 9 months after delivery of the goods or the date when they should have been delivered.

8. Containers.

- (1) Goods may be stuffed by the carrier in or on containers and goods may be stuffed with other goods.
- (2) If goods have been stuffed in a container by or on behalf of the merchant the carrier shall not be liable for loss of or damage to the goods caused by the manner in which they have been stuffed, caused by the unsuitability of the goods for carriage in containers or by the unsuitability or defective condition of the container.
- (3) Where the carrier is instructed to provide a container the carrier is not under any obligation to provide a container of a specific type or quality, unless instructed otherwise in writing.

9. Description of goods.

- (1) This bill of lading shall be prima facie evidence of the receipt by the carrier of the goods in apparent sound condition, except as noted otherwise. However no representation is made by the carrier as to the weight, the contents, measure, quantity, quality, description, marks, numbers or value of the goods. The carrier shall be under no liability whatsoever in relation to such description or particulars.
- (2) If any particulars of any letter of credit, import license, sales contract, invoice number or the like to which the carrier is not a party is shown on the reverse side of this bill of lading such particulars are included solely at the request of the merchant for his convenience. The merchant agrees that the inclusion of such particulars shall not be regarded as a declaration of value and in no way affects the carrier's liability.

10. Carriage affected by condition of goods.

If it appears that the goods can not safely or properly be carried or carried further the carrier may without notice to the merchant take any measure and/or incur any additional expense to carry or to continue the carriage thereof, and/or sell or dispose of the goods, and/or abandon the carriage and/or store them at any place whichever the carrier in his absolute discretion considers most appropriate, which abandonment, storage, sale or disposal shall be deemed to constitute due delivery under this bill of lading. The merchant shall indemnify and hold the carrier harmless from all expenses incurred by him.

11. Merchant's responsibility.

- (1) All persons within the definition of merchant in clause 1 shall be jointly and severally liable to the carrier for the fulfilment of all obligations and warranties undertaken by the merchant either in this bill of lading or required by law. The merchant shall indemnify and hold the carrier harmless against all loss, damage, expenses and fines arising or resulting from any breach of these obligations and warranties.

- (2) The merchant warrants to the carrier that the particulars relating to the goods have been checked and are correct. The merchant also warrants that the goods are lawful goods and contain no contraband.
- (3) The merchant shall comply with all regulations and shall bear and pay all duties, taxes, fees, imposts, expenses or losses incurred or suffered by reason of any failure to so comply and shall indemnify and hold the carrier harmless in respect thereof.
- (4) If containers are unpacked by or on behalf of the merchant the merchant is responsible for returning the empty containers with interiors brushed and clean to the point or place designated by the carrier within the time prescribed. Should a container not be returned within the prescribed time the merchant shall be liable to pay demurrage, loss and expenses.

12. Deck cargo and live animals.

- (1) Goods may be carried on deck or under deck without notice to the merchant. All such goods shall participate in general average and shall be deemed to be within the definition of goods for the purpose of the Hague Rules and shall be carried subject to these Rules.
- (2) In the case of carriage of goods which are stated on the reverse side of this bill of lading as being carried on deck and which are so carried the Hague Rules shall not apply and the carrier shall be under no liability whatsoever for loss, damage or delay, howsoever arising.
- (3) The Hague Rules shall not apply to the carriage of live animals. The carrier shall be under no liability whatsoever for any injury, illness, death, delay or destruction howsoever arising. The merchant shall indemnify and hold the carrier harmless against all and any costs incurred for any reason whatsoever in connection with carriage of live animals.

13. Methods and route of carriage.

- (1) The carrier may at any time without notice to the merchant use any means of carriage, transfer the goods from one conveyance to another, unpack and remove the goods, proceed by any route in his discretion, load or unload the goods at any place or port, comply with orders and recommendations given by authorities and permit actions in relation to the navigation of the vessel.
- (2) The liberties set out in 13.1 above may be invoked by the carrier for any purposes whatsoever whether or not connected with the carriage of the goods. Anything done in accordance with 13.1 above or any delay arising therefrom shall be deemed to be within the contract of carriage and shall not be a deviation of whatsoever nature or degree.

14. Matters affecting performance.

If at any time the carriage is or is likely to be affected by any hindrance, risk, delay, difficulty or disadvantage of any kind whensoever and howsoever arising the carrier may in its sole discretion:

- (1) Carry the goods to any place or port and place the goods at merchant's disposal, whereupon the responsibility of the carrier shall cease. The carrier shall nevertheless be entitled to full freight and the merchant shall pay any additional costs.

- (2) Suspend the carriage of the goods and store them under these terms and conditions. The carrier endeavours to forward them as soon as possible but makes no representations as to the maximum period of suspension. The merchant is obliged to pay additional freight and costs.

15. Dangerous goods.

- (1) No goods which are or may become hazardous, dangerous, inflammable or damaging shall be tendered to the carrier for carriage without his express consent in writing and without the container and the goods being distinctly marked on the outside so as to indicate the nature and character of any such goods and so as to comply with applicable laws, regulations and requirements. If any such goods are delivered to the carrier without such written consent and/ or marking they may at any time be destroyed, disposed of, abandoned or rendered harmless without compensation to the merchant.
- (2) The merchant warrants that the goods are sufficiently and properly packed.
- (3) Whether or not the merchant was aware of the nature of the goods he shall indemnify and hold the carrier harmless against all claims, losses, damages or expenses arising as a consequence of the carriage of such goods.
- (4) Nothing in this clause shall deprive the carrier of any of its rights provided for elsewhere.

16. ISPS-code

- (1) The merchant must comply with the requirements of the ISPS-code. If the carrier is held liable by any authority or any other third party the merchant will indemnify and hold the carrier harmless from any damages resulting from the violations of the ISPS-code by the merchant.
- (2) The merchant undertakes to pay the carrier costs and expenses arising out of or related to security regulations or measures required by the authorities in accordance with the ISPS-code relating to the merchant's goods.
- (3) The carrier is entitled to deviate the vessel to a different port and to discharge the goods there if the authorities in the port of discharge have increased their level of security according to the ISPS-code after the goods have been loaded.
- (4) The merchant undertakes to compensate any costs and expenses suffered by the carrier because of a delay of the vessel resulting from a violation of the ISPS-code by the merchant.

17. Notification and delivery.

- (1) Any mention herein of parties to be notified of the arrival of the goods is solely for information of the carrier and failure to give such notification shall not involve the carrier in any liability nor relieve the merchant of any obligation hereunder.
- (2) If no place of delivery is named on the reverse side of this bill of lading the carrier shall be at liberty to discharge the goods at the port of discharge, without notice, whereupon the responsibility of the carrier in respect of the goods discharged shall wholly cease. The merchant shall take delivery of the goods upon discharge.
- (3) If a place of delivery is named on the reverse side of this bill of lading the merchant shall take delivery of the goods within the time provided for by the carrier.

- (4) If the delivery of the goods is not taken by the merchant at the time and place where the carrier is entitled to call upon the merchant to take delivery thereof the carrier shall be at liberty to unpack the goods if packed in containers and/or to store the goods at the sole risk of the merchant. Such storage shall constitute due delivery hereunder and thereupon the liability of the carrier shall wholly cease. The costs of such storage shall forthwith upon demand be paid by the merchant. The merchant irrevocably and unconditionally undertakes to refund at the carrier's first demand all costs for storage, quay- or harbour duties and any other costs. Furthermore the merchant undertakes to return carrier's owned equipment and accepts full liability for any damage and demurrage. The merchant accepts that any freight may be increased with sur-charges at the place of delivery.
- (5) If the merchant fails to take delivery of the goods within 30 days of delivery becoming due or if in the opinion of the carrier they are likely to deteriorate, decay, become worthless or incur charges in excess of their value the carrier may without any responsibility whatsoever attaching to him sell, destroy or dispose of the goods.
- (6) If at the place where the carrier is entitled to call upon the merchant to take delivery of the goods he is obliged to hand over the goods into the custody of authorities such hand-over shall constitute due delivery to the merchant.
- (7) Refusal by the merchant to take delivery of the goods shall constitute a waiver by the merchant to the carrier of any claim whatsoever.
- (8) Subject to the carrier agreeing in writing to a request of the merchant to amend the place of delivery the terms and conditions of this bill of lading shall continue to apply.

18. Freight.

- (1) Freight shall be deemed fully earned on receipt of the goods by the carrier and shall be paid and non-returnable in any event.
- (2) The merchant's attention is drawn to the stipulations concerning the currency in which the freight is to be paid, rate of exchange, devaluation and other contingencies relative to freight.
- (3) Freight has been calculated on the basis of particulars furnished by the merchant. The carrier may at any time open any container or other package or unit in order to identify weight, measure and value of the goods. If the particulars furnished by the merchant are incorrect it is agreed that a sum equal to double the correct freight less the freight charged shall be payable as liquidated damages to the carrier.
- (4) All freight shall be paid without any set-off, counterclaim, deduction or stay of execution before delivery of the goods.
- (5) The persons falling within the definition of merchant in clause 1 shall be jointly and severally liable for the payment of freight and liquidated damages as provided in this clause.

19. Lien.

The carrier shall have a lien on the goods and any documents relating thereto for all sums payable to the carrier under this contract and for general average contributions. The carrier shall also have a lien on the goods and documents relating thereto for all sums due by the holder of the bill of lading under any other contract. The carrier shall have the right to sell the goods by public auction or private treaty

20. General average.

- (1) The carrier may declare general average which shall be adjustable according to the York/Antwerp rules 1994 and the amended Jason clause as approved by Bimco is to be considered as incorporated herein. The merchant shall provide such security as may be required by the carrier.
- (2) Furthermore the merchant shall indemnify and hold the carrier harmless in respect of any claim and any expense of a general average nature which may be made on the carrier and shall provide such security as may be required by the carrier.
- (3) The carrier shall be under no obligation to take any steps whatsoever to collect security for general average contributions from the merchant.

21. Both to blame collision clause.

If the vessel on which the goods are carried comes into collision with another vessel or object (the non-carrying vessel or object) as a result of the negligence of the non-carrying vessel or object or the owner of, charterer of or person responsible for the non-carrying vessel or object the merchant undertakes to indemnify and hold the carrier harmless against all claims by or liability to any vessel or person in respect of any loss of or damage to or any claim whatsoever of the merchant paid or payable to the merchant by the non-carrying vessel or object or owner of, charterer of or person responsible for the non-carrying vessel or object and set-off, recouped or recovered by such vessel, object or person against the carrier, the carrying vessel or her owners or charterers.

22. Variation of the contract.

No servant or agent of the carrier shall have power to waive or vary any of the terms hereof unless such waiver or variation is in writing and is specifically authorised or ratified in writing by a director or officer of the carrier who has actually authority of the carrier to do so.

23. Validity

If any provision in this bill of lading is held to be invalid or unenforceable by any court such invalidity or unenforceability shall attach only to such provision. The validity of the remaining provisions shall not be affected thereby .

24. Law and jurisdiction.

Except as otherwise provided herein any claim or dispute whatsoever arising in connection with the carriage under this bill of lading shall be governed by Dutch law and determined in The Netherlands by the first instance court in Rotterdam to the exclusion of the jurisdiction of the courts of any other place. In case however the carrier intends to sue the merchant the carrier has also the option to file a suit at the merchant's place of business.